United Nations A/73/346–S/2018/597

General Assembly
Security Council

Distr.: General
27 August 2018

Original: English

General Assembly
Seventy-third session
Items 38 and 39 of the provisional agenda*

The situation in the Middle East

Question of Palestine

Security Council
Seventy-third year

Peaceful settlement of the question of Palestine

Report of the Secretary-General

Summary

The present report is submitted in accordance with the request of the General Assembly in paragraph 27 of its resolution 72/14. The report, which covers the period from September 2017 through August 2018, contains a reply received from one of the parties concerned to the note verbale sent by the Secretary-General pursuant to the request contained in resolution 72/14, as well as the observations of the Secretary-General on the current state of the Israeli-Palestinian conflict and on international efforts to move the peace process forward, with a view to achieving a peaceful settlement of the question of Palestine.

* A/73/150.

18-14062 (E) 140918

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I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 72/14.

2. On 5 July 2018, pursuant to the request contained in paragraph 27 of resolution 72/14, I addressed the following letter to the President of the Security Council:

> "I have the honour to refer to resolution 72/14, which the General Assembly adopted on 30 November 2017, at its seventy-second session, under the agenda item 'Question of Palestine'.
>
> "Paragraph 27 of the resolution requested the Secretary-General to continue his efforts with the parties concerned, and in consultation with the Security Council, including with regard to the reporting required pursuant to resolution 2334 (2016), towards the attainment of a peaceful settlement of the question of Palestine and the promotion of peace in the region and to submit to the General Assembly at its seventy-third session a report on these efforts and on developments on this matter.
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> "In order to fulfil my reporting responsibilities under this resolution, I should be grateful if you would kindly convey to me the views of the Security Council by 20 July 2018.
>
> "Recalling the Secretariat's obligation to observe the page limit of its reports, pursuant to General Assembly resolution 52/214, I would like to encourage the Security Council to limit its submission to 1,500 words."

3. As at 22 August 2018, no response had been received to that request.

4. In a note verbale dated 21 May 2018, I sought the positions of States Members of the United Nations, in particular the concerned Governments of Egypt, Israel, Jordan, Lebanon and the Syrian Arab Republic, as well as the State of Palestine, regarding any steps taken by them to implement the relevant provisions of the resolution. As at 22 August 2018, replies had been received from the Permanent Missions of Cuba and Japan and from the Permanent Observer Mission of the State of Palestine.

5. The note verbale dated 13 July 2018 from the Permanent Observer Mission of the State of Palestine to the United Nations reads as follows:

> "By its resolution 72/14, the General Assembly reaffirmed its longstanding, authoritative stance on the question of Palestine in all its dimensions and reflected on the efforts of the international community to achieve a just, lasting, peaceful solution. The principles affirmed therein, in line with international law and other relevant resolutions, continue to comprise the fundamental pillars of a solution, and the support given to the resolution reaffirms the international consensus in this regard.
>
> "In a year marking the fiftieth year of Israel's occupation of Palestinian and Arab territories and the seventieth year since the adoption of General Assembly resolution 181 (II) partitioning Mandate Palestine, the Assembly overwhelmingly supported the adoption of resolution 72/14; the debate was characterized by repeated calls for an end to the Israeli occupation that began in 1967; for measures to ensure the inalienable rights of the Palestinian people, foremost to self-determination; and for responsible international action to peacefully resolve the Israeli-Palestinian conflict, in line with the relevant resolutions, including Security Council resolution 2334 (2016) and General Assembly resolution 194 (III). Numerous delegations stressed that this conflict remains a primary source of instability and insecurity in the region and that the

question of Palestine remains the key to peace and a litmus test for the capacities of the Security Council and General Assembly to ensure the rule of law and accountability for its violation.

"The demands of the General Assembly in resolution 72/14, underscoring the international consensus and exigency of peace efforts, echo the demands of the Security Council in resolution 2334 (2016).

"Council resolution 2334 (2016), which was welcomed globally, was also welcomed and endorsed by the Palestinian leadership, which remains steadfast in its commitment to the path of peace and achieving freedom, rights and justice on this path, and consistently strives to uphold all relevant United Nations resolutions. This includes a firm commitment to non-violence and the pursuit of peaceful, political, diplomatic and legal means for the attainment of Palestinian rights and a just solution, and cooperation with all international and regional efforts to that end.

"Regrettably, in contrast to the global welcome and importance accorded to resolution 2334 (2016), we continue to witness the extremely hostile reaction of Israel, the occupying Power, to the Security Council's action, and indeed to any General Assembly action in this regard, including the adoption of resolution 72/14. Despite the fact that the resolution was adopted in full conformity and consistency with the Charter of the United Nations, international law, the relevant resolutions and the longstanding consensus on this matter, the Israeli Government has vehemently rejected it, aggressively pursuing its illegal policies and measures in Occupied Palestine, including East Jerusalem, in blatant contempt of resolutions 2334 (2016), 72/14 and other core resolutions, in grave violation of its legal obligations, including under Article 25 of the Charter, and in total contradiction to the two-State solution, which is dependent on the full, immediate cessation and reversal of such illegal activities.

"Since the adoption of resolution 72/14, Israel's settlement and land grab activities have continued unabated, including: announcements and decisions on the construction of further settlements, including wall construction; the forced displacement of thousands more Palestinians, including Bedouin families, particularly in the areas of Occupied East Jerusalem and the Jordan Valley, including in the sensitive so-called "E-1" area; the confiscation of huge tracts of land; and the destruction of hundreds more Palestinian homes and properties to facilitate the expansion of Israeli settlements and the illegal wall. Members of the Israeli Government, along with other extremist voices, have also pushed for Israeli annexation plans, with some Israeli politicians explicitly calling for annexation of the West Bank.

"Yet, despite Israel's flagrant violations, the Palestinian leadership continues to adhere to a peaceful path and has repeatedly reaffirmed its readiness to engage in good faith in peace efforts based on the rule of law and United Nations resolutions, as it has done throughout the decades of the Middle East peace process at every stage. It must be restated here: for nearly 30 years, Palestine's position has mirrored the global consensus on the two-State solution. This began with the acceptance by the Palestine National Council of the solution set out in the 1988 Declaration of Independence, a major compromise agreement to establish the Palestinian State on only 22 per cent of its historic homeland, for the sake of realizing Palestinian rights, including to freedom and independence, and the establishment of a lasting peace. This compromise remains the primary testament to our commitment to peace and, with the 2002 Arab Peace Initiative, represents the boldest contribution towards solving the conflict and should be recognized as such.

"The Palestinian commitment to a solution of two-States, based on the pre-1967 borders in accordance with international law, United Nations resolutions, the Madrid principle of land for peace, the Arab Peace Initiative and the Quartet road map, has been clearly reaffirmed, including at the highest levels by President Mahmoud Abbas and the Executive Committee of the Palestine Liberation Organization. In his address to the Security Council, on 20 February 2018, President Abbas reiterated the calls for a multilateral political process to achieve the two-State solution, based on those longstanding parameters and international consensus, and reaffirmed his readiness to engage, including in an international peace conference. We have appealed to the Security Council and to members of the Quartet to uphold their obligations and to exert every possible effort to this end, in cooperation with concerned regional partners and the League of Arab States and with the vital support of the Organization of Islamic Cooperation, the Movement of Non-Aligned Countries and all peace-loving nations.

"This commitment has been further bolstered by repeated pledges to peacefully resolve the conflict, in accordance with the Charter, international law and the relevant United Nations resolutions, as confirmed, inter alia, in the application by the State of Palestine on 28 September 2011 for membership in the United Nations; in Palestine's accession to numerous international treaties and conventions; in our bilateral and multilateral engagement with the international community, including in the context of diplomatic and cooperation agreements concluded with many States that have recognized Palestine; in all of Palestine's official communications and interventions at the United Nations; and as reflected in the relevant provisions of declarations by the League of Arab States, the Movement of Non-Aligned Countries, the Organization of Islamic Cooperation and the Group of 77.

"Furthermore, this commitment has been borne out by the cooperation of the Palestinian leadership with, inter alia, efforts by the members of the Quartet, collectively and individually, as reflected in the series of meetings held by President Abbas and other high-level Palestinian officials throughout 2017 and 2018. This also includes support for the reaffirmation of the Arab Peace Initiative by the Arab Summit, held in Riyadh in April 2018, despite the failure of Israel to respond to or to reciprocate with regard to the Initiative since it was first adopted in 2002.

"Despite all obstacles and Israel's consistently bad-faith engagement, Palestine has also engaged for over two decades in good-faith negotiations to end the occupation and achieve a just and comprehensive peace agreement and the rights of the Palestinian people. The Palestinian leadership has even engaged in efforts with the new United States administration of President Donald J. Trump to advance peace, including affirmation of its readiness to engage in negotiations, up until the extremely regrettable decision by the United States administration, on 6 December 2017, to recognize 'Jerusalem as the capital of Israel' and to transfer the United States Embassy to the city, in contravention of Security Council resolutions and the solid international consensus.

"Prior to the decision of the United States, and immediately thereafter, Palestine affirmed that any decision or action by whomever, and whenever contrary to the numerous Security Council resolutions on Jerusalem, including resolutions 476 (1980) and 478 (1980) and 2334 (2016), would not be accepted, either by Palestine or by the international community. We also recall the Council's affirmation in resolution 2334 (2016) that 'it will not recognize any changes to the 4 June 1967 lines, including with regard to Jerusalem, other than those agreed by the parties through negotiations,' as well as the clear

acknowledgment of the legitimate interest of the international community as a whole in the question of Jerusalem, and the unequivocal prohibition on the acquisition of territory by force.

"The provocative decision by the United States, obviously intended to prejudge the outcome of negotiations for a solution to the Israeli-Palestinian conflict, totally contradicts ongoing international and regional efforts to create the conditions conducive for meaningful negotiations for a peaceful solution, and has undermined the role of the United States in the pursuit of peace and as a credible and impartial broker. The Palestinian leadership remains insistent that a comprehensive and just solution to the question of Palestine cannot be achieved without a just solution to the question of Jerusalem, and without East Jerusalem as the capital of Palestine.

"Moreover, peace cannot be achieved without restoring the primacy of international law to efforts to resolve the conflict. A solution must be based on international law and the relevant United Nations resolutions: negotiations on that basis, including on the final status issues, not unilateral, unlawful imposition of facts on the ground, are the means to achieve such a just, peaceful solution. As reflected in the Secretary-General's agenda for the United Nations, the peaceful resolution of conflicts requires a human rights, justice and development perspective, not just a security perspective, and the root causes of conflict must be addressed.

"We have never sought, and do not assume to be able, to force a solution, as the occupying Power and its supporters do; we have simply and transparently sought the application of the law to bring an end to the conflict and achieve our rights. At every juncture and in every appeal, this is all we have asked for; nothing beyond what we are entitled to as a people according to international law, and nothing beyond what is legislated in United Nations resolutions and affirmed in the advisory opinion rendered by the International Court of Justice on 9 July 2004.

"In this regard, we recall that the international consensus was again reaffirmed in the Security Council following the announcement by the President of the United States on Jerusalem. The overwhelming majority of the Council, 14 Member States, stood firm in rejection of this decision and in compliance with relevant resolutions and their Charter obligations, despite the United States veto of the draft resolution presented for a vote on 18 December 2017. The General Assembly, in its resumed tenth emergency special session on 21 December 2017, adopted resolution ES-10/19, which also stressed the longstanding international position on Jerusalem, reaffirming the Assembly's compendium of relevant resolutions along with those of the Security Council.

"Unfortunately, the decision of the United States has emboldened Israel's illegal actions in Jerusalem and the rest of the Occupied Palestinian Territory, effectively rewarding its intransigence and supporting its impunity, and has emboldened other States, including Guatemala and Paraguay, to flout the law and United Nations resolutions, undermining efforts to achieve a peaceful settlement.

"As briefly reflected in resolution 72/14, these Israeli violations include: an unlawful colonization campaign and actions aimed at facilitating settlement activities; Israeli settler violence and terrorism, with a weekly average of five attacks since the beginning of 2018; military raids causing Palestinian civilian casualties; arbitrary arrest and detention operations and imprisonment of 5,900 Palestinians, including children and women, who are routinely exposed to physical and psychological abuse and torture, with the male population most

severely affected; restrictions on movement and other fundamental freedoms, including to worship, education, health care, development and water; imposition of an 11-year blockade on Gaza, isolating and collectively punishing the 2 million Palestinians living there; and regular military aggressions against the densely-populated enclave.

"Despite the calls to lift its inhumane, illegal blockade of Gaza, Israel continues to unleash its wrath against the population living there. Since the adoption of resolution 72/14, and particularly during the "Great Return March", a large-scale peaceful civilian protest against Israel's illegal occupation, oppression and dispossession of the Palestinian people, which launched on 30 March 2018, lethal, indiscriminate force has been routinely used by occupying forces against Palestinian civilians, causing wilful and wanton death and injury, including the massacre of 69 Palestinian civilians on 14 May, in grave violation of international law. Overall, more than 140 Palestinians have been killed by the occupying forces since 30 March, including 19 children, and 15,200 people have been injured.

"Israeli incitement and inflammatory rhetoric regarding Jerusalem and provocations and violence by Jewish extremists against Muslim and Christian holy sites, particularly targeting Al-Haram Al-Sharif, also continue to stoke sensitivities and threaten to trigger a dangerous religious conflict. Such violations are being perpetrated jointly by the occupying Power, its occupying forces and extremist settlers.

"Against this backdrop, it should be considered extraordinary that our commitment to a peaceful path has endured. Over the decades, the Palestinian Government and national institutions have also taken measures to mitigate the occupation's devastating consequences, allay tensions, ensure calm and security, restore hope and preserve peace prospects in every sector, as reflected in the priorities set out in successive Palestinian National Development Plans presented by Prime Minister Rami Hamdallah and preceding Governments, and also in the United Nations Development Assistance Framework. The programmes of United Nations agencies, with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) at the forefront, along with the Office for the Coordination of Humanitarian Affairs, the United Nations Children's Fund (UNICEF), the United Nations Development Programme (UNDP), the Office of the United Nations Special Coordinator for the Middle East Peace Process, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and other organizations, have been instrumental in this regard, as has been the assistance and solidarity extended to Palestine by concerned States from every corner of the globe. Our work with the Ad Hoc Liaison Committee for the Coordination of the International Assistance to Palestinians is also relevant in this regard.

"Such support has been exemplary in the case of UNRWA, which has received generous voluntary funding from donor countries since its establishment in 1949. Throughout the year, and in the light of the sudden, dramatic funding cut to UNRWA by the United States administration in January 2018, Palestine has persisted with efforts to foster more predictable, sufficient and sustained support for UNRWA to assist it in effectively carrying out its mandate. These efforts recognize the indispensability of the humanitarian and development aid provided by UNRWA; its critical stabilizing role in the region; and the commitment made in the New York Declaration for Refugees and Migrants to ensure sufficient funding to the Agency, pending a just solution. Our engagement on this also constitutes a substantial contribution to the just peace we seek.

"We have also repeatedly underscored the international obligation to ensure the protection of the Palestinian people, in accordance with international humanitarian and human rights law and the many relevant resolutions aimed at protecting and ensuring the safety and well-being of civilians, for this obligation has not only been abdicated by Israel, the occupying Power, but it is being intentionally, grossly and systematically violated by it. Moreover, it is unquestionable that the de-escalation of the situation and efforts to ensure civilian protection and well-being can only contribute to peace efforts.

"Thus, despite the failure of the Security Council to address the protection crisis, due to the veto cast by the United States on 1 June 2018 on a draft resolution presented by Kuwait in its capacity as the Arab representative on the Council, we persisted in our efforts to address the Palestinian people's protection needs. We welcome the adoption of resolution ES-10/20 by the General Assembly on 13 June 2018, as a contribution to defusing tensions, deterring violence against civilians and advancing consideration of measures to ensure the safety, well-being and protection of the Palestinian civilian population, beginning with a request that the Secretary-General submit a report containing proposals on means towards this end, including recommendations regarding an international protection mechanism.

"While our efforts and international support have been constant, what remains absent is the political will to implement the relevant Security Council and General Assembly resolutions central to achieving a peaceful settlement. The continued failure of the Security Council on this issue has been a direct result of both Israeli intransigence and disrespect and the paralysis caused by the veto power of one permanent member. Insufficient pressure has been exerted on the Israeli Government to cease its violations and destruction of the two-State solution, and the prospect of a peaceful future for the Palestinian and Israeli peoples will continue to remain an illusion as long as the occupying Power feels shielded from accountability in this regard.

"Among recent steps in the right direction, including efforts undertaken in the General Assembly and the Security Council, was the decision of the Human Rights Council, on 18 May 2018, to establish an independent, international commission of inquiry, with a mandate to investigate all cases of death and injury since 30 March and to ensure accountability for the violations of international law that took place in the context of the large-scale civilian protests in Gaza.

"This investigation must reinforce serious, collective efforts at the United Nations during this period to bring the monumental injustice faced by the Palestinian people to an end. As reaffirmed in General Assembly resolution 72/14, the United Nations has a permanent responsibility towards the question of Palestine until it is justly resolved in all aspects, and it must act accordingly. The Security Council, in particular, has the authority and legal tools to remedy this situation and it must act immediately to uphold its duties under the Charter and to implement its resolutions towards realization of a just, peaceful solution.

"It must be signaled to the occupying Power that its defiance will no longer be tolerated and that it must halt all violations. This is critical for creating an environment conducive to the credible dialogue and negotiations needed to bring about an end to the Israeli occupation that began in 1967; to finally achieve the independence of the State of Palestine, with East Jerusalem as its capital; and to establish lasting peace, security and coexistence between the Palestinian and Israeli peoples on the basis of the two-State solution and in accordance with the relevant United Nations resolutions, including resolution 72/14."

II. Observations

6. International efforts to promote the peaceful settlement of the question of Palestine continued during the reporting period. The Middle East Quartet envoys met on two occasions and consulted throughout the year. On 31 January 2018, Norway and the European Union convened an extraordinary ministerial meeting of the Ad Hoc Liaison Committee for the Coordination of the International Assistance to Palestinians, at which members reiterated support for the two-State solution in line with relevant United Nations resolutions. At its meetings, the League of Arab States also reiterated its support for a peaceful resolution of the Question of Palestine.

7. On 6 December 2017, the United States recognized Jerusalem as the capital of Israel, while calling on all parties to maintain the status quo at Jerusalem's holy sites and stating that final status issues remain up to the parties. On 21 December, the General Assembly held a special session on the status of Jerusalem and adopted resolution ES-10/19, affirming that "any decisions and actions which purport to have altered the character, status or demographic composition of the Holy City of Jerusalem have no legal effect, are null and void and must be rescinded in compliance with relevant resolutions of the Security Council". The United States opened its Embassy to Israel in Jerusalem on 14 May 2018. This move, followed on 16 and 21 May by similar actions by Guatemala and Paraguay, was objected to by the Palestinian Authority and members of the international community, including several other States, the Organization of Islamic Cooperation and the League of Arab States.

8. The Palestinian leadership has since ceased its engagement with the United States, and has called for the establishment of a new international mechanism to oversee the peace process, stating that it will continue to pursue State recognition and full membership in international organizations. On 20 February 2018, the President of the Palestinian Authority, Mahmoud Abbas, addressed the Security Council and called for an international peace conference, to be held by mid-2018, that would form a multilateral mechanism to assist the two parties in the negotiations to resolve all permanent status issues. During the reporting period, the State of Palestine acceded to a number of international treaties, conventions, including the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, and organizations, including the United Nations Conference on Trade and Development and the United Nations Industrial Development Organization.

9. With regard to Security Council resolution 2334 (2016), I delivered four reports to the Security Council on the implementation of the resolution, in which I noted with concern the lack of implementation of particular provisions. I remain committed to working with all concerned parties to find a peaceful, negotiated solution to the conflict based on the two-State solution. I have reiterated the well-known position of the United Nations that Jerusalem is one of the key final status issues that must be resolved, based on relevant United Nations resolutions and previous agreements, taking into account the legitimate concerns of both sides, to realize the national aspirations of Palestinians and Israelis.

10. On 12 October 2017, Palestinian factions signed an agreement, facilitated by Egypt, to allow the return of the Palestinian Government to Gaza, which could lead to reconciliation. The Gaza crossings were nominally handed over to the Palestinian Authority on 1 November, and public-sector employees recruited by the Palestinian Authority prior to 2007 registered in preparation for the establishment of a unified work force. Obstacles arose in subsequent talks, however, including over questions related to the full empowerment of the Palestinian Government in Gaza, the integration of public sector employees and the collection of revenue in Gaza. The

process was also seriously challenged on 13 March 2018, when the convoy of Palestinian Authority Prime Minister Rami Hamdallah came under attack by the detonation of a roadside bomb in Gaza, which, lightly injured six people. I strongly condemned this attack and commended Prime Minister Hamdallah for remaining committed to the peace process. I welcome the continued engagement of Egypt in this regard and call on Palestinian factions to move forward with implementing the intra-Palestinian agreement of 12 October 2017 and advancing genuine Palestinian unity on the basis of democracy and the principles set out by the Palestine Liberation Organization and the members of the Quartet. I reiterate that Palestinian unity is a key step in reaching the larger objective of a Palestinian State and lasting peace.

11. During the reporting period, the situation on the ground was characterized by the most significant violence in Gaza since the hostilities of 2014. The situation deteriorated following the start of the "Great March of Return" protests on 30 March 2018, with tens of thousands of Palestinians protesting at or near the perimeter fence between Israel and the Gaza Strip. During the reporting period, 194 Palestinians, including 29 children, were killed in Gaza, 59 on 14 May alone, and an additional 13 Palestinians died of wounds sustained that day, the peak of the protests. Hamas and Islamic Jihad have publicly acknowledged that a number of their members were among those killed in the protests and other incidents. According to the Gaza Ministry of Public Health, during the protests, more than 3,700 Palestinians were wounded by live ammunition resulting in life-altering injuries. One Israeli soldier was killed by sniper fire from Gaza, the first such Israeli fatality since 2014, and five Israeli soldiers were injured near the perimeter fence.

12. Among the thousands of peaceful demonstrators, hundreds reportedly attempted to breach the fence, burned tires, threw rocks and fire bombs at Israeli forces or their posts, launched incendiary kites and balloons and laid improvised explosive devices, at least two of which exploded at or near the fence. According to the Israeli authorities, incendiary kites and balloons caused large fires that burned and damaged thousands of acres of agricultural fields and nature reserves. On three occasions, Palestinian protesters attacked the Kerem Shalom crossing and severely damaged the infrastructure on the Palestinian side, temporarily hampering the delivery of urgently needed humanitarian assistance.

13. This period also constituted the most serious escalation in Gaza since the war in 2014. On 29 May alone, reportedly in response to the deaths in Gaza, nearly 200 rockets and mortars rounds were fired from the Gaza Strip towards Israel. The majority of the projectiles were intercepted by Israel's Iron Dome defence system, while one mortar reportedly landed in the grounds of a kindergarten in the Eshkol Regional Council, causing no injury. Three Israeli soldiers and two civilians were reportedly injured in other incidents. The Israeli Defense Forces responded by striking targets it attributed to both Hamas and the Islamic Jihad, who had claimed joint responsibility for the attacks.

14. On 14 and15 July 2018, another military escalation ensued between Palestinian militants and the Israeli Defense Forces. Two Palestinian teenagers were killed in an airstrike in Gaza city and 25 were injured by Israeli strikes. Three Israelis were also wounded from a rocket that landed on a residential home in the Israeli town of Sderot.

15. My Special Coordinator for the Middle East Peace Process has been in communication with both sides and with Egypt throughout the crisis. In a press conference in Gaza on 15 July, he warned that Gaza was on the brink of what could be a devastating war. I repeat my unequivocal condemnation of all the actions that have cost so many lives and urge all sides to urgently step back from the brink of another devastating conflict.

16. Following the demonstrations in Gaza, the Security Council held three extraordinary sessions; the Organization of Islamic Cooperation held an extraordinary summit in Istanbul on 18 May; and the League of Arab States Foreign Ministers met in Cairo on 17 May. On 18 May, the Human Rights Council adopted resolution S-28/1, in which it decided "to urgently dispatch an independent, international commission of inquiry, to be appointed by the President of the Human Rights Council, to investigate all alleged violations and abuses of international humanitarian law and international human rights law in the Occupied Palestinian Territory, including East Jerusalem, particularly in the occupied Gaza Strip, in the context of the military assaults on the large-scale civilian protests that began on 30 March 2018".

17. On 22 May 2018, pursuant to articles 13 (a) and 14 of the Rome Statute of the International Criminal Court, the State of Palestine asked the Prosecutor of the Court to investigate, in accordance with the temporal jurisdiction of the Court, past, ongoing and future crimes within the court's jurisdiction, committed in all parts of the territory of the State of Palestine. Following the referral, in a statement on 22 May, the Prosecutor, Fatou Bensouda, noted that since 16 January 2015, the situation in Palestine had been subject to a preliminary examination in order to ascertain whether the criteria for opening an investigation had been met. She also noted that the preliminary examination had seen important progress and that the investigation would continue to follow its normal course, strictly guided by the requirements of the Rome Statute.

18. On 13 June 2018, at the tenth emergency special session of the General Assembly, resumed at the request of Algeria (as Chair of the Arab Group) and Turkey (as Chair of the Organization of Islamic Cooperation), the Assembly adopted resolution ES-10/20, entitled "Protection of the Palestinian Civilian Population", by a vote of 120 in favour, 8 against and 45 abstentions. The resolution was adopted after a failed attempt to adopt a similar resolution in the Security Council put forward by Kuwait on 1 June 2018. In resolution ES-10/20, the Assembly requested the Secretary-General to examine the situation and to submit a written report within 60 days containing his proposals on ways and means of ensuring the safety, protection and well-being of the Palestinian civilian population under Israeli occupation, including recommendations regarding an international protection mechanism. I submitted my report on the protection of the Palestinian civilian population to the General-Assembly on 14 August. (A/ES-10/794)

19. I reiterate that Israel has a responsibility to exercise maximum restraint in the use of live fire and not to use lethal force, except as a last resort, against imminent threat of death or serious injury. It must protect its citizens, but it must do so with due respect for international humanitarian law.

20. The actions by Hamas, Palestinian Islamic Jihad and other militant groups in Gaza put at risk not only the lives of Israelis and Palestinians, but also the efforts to ensure a liveable future for the people of Gaza. The indiscriminate firing of rockets at civilian populations may constitute a violation of international humanitarian law. Such activities must cease; escalation only costs more precious lives.

21. While Security Council resolution 2334 (2016) called upon both parties "to refrain from provocative actions, incitement, and inflammatory rhetoric", such actions and statements continued during the reporting period. I urge leaders on all sides to stop the incitement and to stand, consistently and unequivocally, against acts of terror and violence in all its forms.

22. On 30 April 2018, during his opening speech at the Palestinian National Council, the President of the State of Palestine, Mahmoud Abbas, made statements that included the unacceptable suggestion that the social behaviour of Jews was the cause of the Holocaust. Those statements were widely condemned by the international

community, and Mr. Abbas subsequently apologized. At the height of the Gaza protests, a senior Hamas official called on protestors to "take down the border and tear out their [Israelis] hearts", one of several public calls by Hamas leaders inciting protestors to violence, including on social media Meanwhile, Fatah's official social media pages continued to glorify the perpetrators of past terror attacks.

23. Israeli officials also made provocative statements, with one Member of Knesset saying that Palestinian teenager Ahed Tamimi, who was tried and imprisoned for slapping a soldier, should have "gotten a bullet, at least in the kneecap". Others called for the killing of civilians in Gaza who launch incendiary kites, annexing the settlements and openly rejecting Palestinian statehood.

24. Stabbings and shootings by Palestinians targeting Israelis and clashes between Palestinians and Internal Security Forces, also continued to claim lives. Aside from the demonstrations in Gaza, 87 Palestinians were killed throughout the Occupied Palestinian Territory, four were perpetrators or alleged perpetrators of attacks in the West Bank and more than 3,000 Palestinians were injured during the reporting period. Five Israeli civilians and six security forces personnel were killed, and more than 70 Israelis, civilians and security forces personnel were injured.

25. I remain concerned about the general state of human rights and freedoms in the Occupied Palestinian Territory. Throughout the reporting period the Israeli Defense Forces continued to conduct search and arrest operations, while the Palestinian Authority continued arrests of suspected Hamas affiliates in the West Bank. At the end of May 2018, 440 Palestinians were being held by Israeli authorities under administrative detention. I reiterate my earlier calls to end the practice of administrative detention and either to charge all detainees, or to release them immediately.

26. As at the end of June 2018, 446 Palestinians were being held in administrative detention, including 4 children. All children should be treated with due consideration for their age, and they should only be detained in situations justified under international humanitarian law or applicable human rights norms.

27. The shrinking space for civil society organizations and human rights defenders remains a cause for concern. There have been incidents where the Palestinian Authority and Hamas have taken actions that have resulted in limits on freedom of expression and, in some cases, arbitrary arrests and the violent suppression of protests. Israel has imposed new restrictions and requirements that could have an impact on Israeli human rights organizations, including some that carry out advocacy work or provide direct humanitarian or legal assistance to Palestinians in the Occupied Palestinian Territory. The Israeli authorities have also detained or restricted the movement of Palestinians for exercising their right to freedom of expression. In its resolution 2334 (2016), the Security Council called on Israel to take steps "to cease all settlement activities in the occupied Palestinian territory, including East Jerusalem". No such steps have been taken during the reporting period. Instead, settlement activities have continued. During the reporting period, Israeli authorities advanced or approved plans and announced tenders for over 6,000 housing units in settlements in Area C of the occupied West Bank.

28. On 30 May 2018, Israel decided to advance, approve and tender some 3,500 housing units in the occupied West Bank, the largest number of advancements granted at one time since June 2017. One third of those units are in settlements in outlying locations deep in the West Bank. On 1 August, the Israeli Civil Administration confirmed its intention to expand the municipal boundaries of the Amichai settlement to include the outpost of Adei Ad. If implemented, this would result in the first outpost legalization, under Israeli law, since 2014. On 14 August, Israeli authorities announced they would publish a tender for 603 units in the Ramat Shlomo settlement

in East Jerusalem, the first such announcement since 2016. In Area C, a tender for an additional 511 housing units was published, and construction based on previously approved plans continued. I reiterate the long-standing position of the United Nations that all settlement activities are illegal under international law and an obstacle to peace. Settlements create yet more obstacles to advancing a negotiated two-State solution. I reiterate that all settlement activity in the Occupied Palestinian Territory, including East Jerusalem, constitutes a flagrant violation under international law, as stated in resolution 2334 (2016), and must cease immediately and completely.

29. In January 2018, the Knesset passed an amendment to the "Basic Law: Jerusalem, Capital of Israel." This change would make it more difficult for Israel to transfer territories that are currently within the Israeli-defined Jerusalem municipality boundaries to a future Palestinian State by requiring a super-majority of 80 votes in the Knesset. The amendment also lowers the threshold required by the Knesset to make changes to Jerusalem's municipal boundaries to a simple majority. On 7 March, the Knesset also approved an amendment to the "Entry to Israel Law", allowing the revocation of permanent residency status of Palestinians in East Jerusalem involved in terrorist activities, treason or espionage, as defined in Israeli law.

30. Demolitions and seizures of Palestinian-owned structures continued across the occupied West Bank, including East Jerusalem. During the reporting period Israeli authorities demolished or seized 326 structures, citing the absence of building permits, which are extremely difficult to obtain in Area C and East Jerusalem. Over 350 people, including 185 children, were displaced and the livelihoods of over 7,160 people were affected.

31. Throughout the reporting period, the United Nations continued warning about the heightened risk of demolition and displacement of several Bedouin communities. On 1 August 2018, Israel's High Court of Justice indicated it did not find sufficient reason to prevent the demolition of the Bedouin village of Khan al-Ahmar. It instructed the State to present an alternative relocation site, on which the parties have not agreed. Demolition is on hold while the Court considers the case. I reiterate that demolitions and forcible evictions, carried out when there is no military need, contravene international humanitarian law and international human rights law.

32. According to the Office for the Coordination of Humanitarian Affairs, and reflecting an increase in the number of incidents, 203 violent incidents involving Israeli settlers and resulting in Palestinian casualties or property damage were documented during the reporting period, resulting in 3 Palestinians killed and 92 injured, as well as damage to property.

33. Palestinians continued to advance their State-building programme, albeit limited to the territory under the control of the Palestinian Authority, which excludes Area C, East Jerusalem and Gaza. The United Nations continued its assistance to the Palestinian people throughout the reporting period (see A/73/84–E/2018/72). In December 2017, the 2018–2020 Humanitarian Response Plan for the occupied Palestinian territory was finalized, including, for the first time, a three-year planning-horizon. The plan requires $539.7 million for 2018 to address urgent humanitarian needs throughout the occupied Palestinian territory, but to date it is only funded by 23 per cent.

34. On 2 July 2018, the Knesset passed a new law reducing the clearance revenues Israel collects on behalf of the Palestinian Authority by an amount equal to the sums paid by the Authority, "directly or indirectly", to certain Palestinian prisoners and their families, as well as to the families of Palestinians killed or injured in attacks or alleged attacks against Israelis. According to the law, the withheld funds will be frozen and can only be released to the Authority if the Israeli Minister of Defense certifies that no such payments were made in a particular year. Implementation of this

law is expected to have a significant negative impact on the fiscal sustainability of the Authority. On 17 July, the Knesset passed an amendment transferring jurisdiction over certain petitions related to decisions by Israeli authorities in the West Bank from the High Court of Justice to the Administrative Affairs Court in Jerusalem.

35. On 30 April 2018, the Palestinian National Council convened in Ramallah for the first time in 22 years, re-electing President Abbas as Chairman. The Popular Front for the Liberation of Palestine and Hamas boycotted the meeting. In its final statement, the Council reiterated its commitment to a peaceful solution based on longstanding parameters and United Nations resolutions. The statement further mandated the Executive Committee "to suspend the recognition of Israel until it recognizes the State of Palestine on the borders of 4 June 1967 and repeals the decision to annex East Jerusalem and stop the settlements", It also endorsed the move to join various international treaties and to seek international protection for the Palestinian people.

36. Electricity outages of up to 20 hours a day continued to undermine the provision of basic services in Gaza, including a health system on the verge of collapse. Given the mass casualties and injuries in the wake of the "Great March of Return" demonstrations, alongside a chronic shortage of medicines and the limited capacities of health facilities, this situation is particularly difficult for the residents of Gaza. The majority of Palestinians in Gaza receive water for only a few hours every three to four days, with significant quantities of raw sewage discharged into the Mediterranean Sea on a daily basis. The United Nations is providing nearly 950,000 litres of emergency fuel per month for critical health, water and waste management infrastructure, constituting a temporary lifeline to the residents of Gaza.

37. The United Nations has actively tried to promote short, medium and long-term interventions to improve the economy and the deteriorating humanitarian situation in Gaza. These need for these services was the basis for discussions at the meetings of the Ad Hoc Liaison Committee in Cairo, Washington, D.C. and Brussels, on 8, 13 and 20 March 2018, respectively. The Committee worked to develop a series of priority engagements aimed at improving the electricity, water and health situations in Gaza.

38. I commend Egypt's decision to open the Rafah crossing for over 80 days during the reporting period, including the extended opening during the month of Ramadan, making it the longest uninterrupted opening of the Rafah crossing since October 2014. I hope for more regular movement through the crossing in future.

39. While playing a key role in ensuring that the Kerem Shalom crossing was kept open almost continuously despite tensions, the Government of Israel imposed a series of severe restrictions on the movement of goods on 9 and 16 July 2018 (imposed on 10 July and 17 July), in response to the launching of incendiary kites and balloons from Gaza towards Israel. On 24 July, the Israeli Ministry of Defense partially lifted the restrictions and allowed additional fuel, food and medicine to pass through the crossing, before reimposing full restrictions on 2 August. The crossing was fully reopened on 15 August. While recognizing Israel's security concerns, the full lifting of all closures within the framework of Security Council resolution 1860 (2009) is critical for the further development of the Strip. I also reiterate my call on the de facto authorities to provide full information on the two Israeli soldiers and two civilians who are being held in Gaza and to ensure their immediate release, as required under international humanitarian law.

40. The reconstruction process in Gaza continued during the reporting period, and nearly 13,500 of the 17,800 houses totally destroyed during the 2014 hostilities have now been rebuilt. The temporary Gaza Reconstruction Mechanism continues to play an important role in this regard. However, despite significant improvement since the beginning of 2018 in the number of Israeli approvals for materials to enter Gaza, there

was no significant increase in imports and the number of new submissions to the Mechanism has also declined. This is largely due to the drop in purchasing power and international assistance for reconstruction.

41. The precarious financial situation of UNRWA remains of serious concern. On 15 March 2018, the Ministers for Foreign Affairs of Egypt, Jordan and Sweden co-chaired an extraordinary ministerial conference to provide sufficient, predictable and sustained funding to UNRWA, reaffirming support for its mandate and for overcoming the Agency's unprecedented shortfall of $446 million. Despite recent crucial contributions, the shortfall remains at $217 million. I have warned that failing to address its funding shortfall will not only have serious humanitarian and developmental consequences, but also implications for regional stability. I call on all Member States to further support UNRWA in this regard.

42. The recent escalation of violence in Gaza is a painful reminder of the devastating consequences of prolonged conflict. In response to requests by Security Council members for specific actions to help prevent renewed conflict, my Special Coordinator has outlined a strategy for Gaza that includes: (a) support for the Egyptian- brokered Palestinian reconciliation process and the return of the Palestinian Authority to Gaza; (b) advancement of urgent interventions to bolster water, energy and health networks in Gaza, alongside employment-generation schemes; (c) enhancement of the capacity of the United Nations to support and to fast track project implementation; (d) and strengthening of coordination between the United Nations, the Palestinian Authority, Israel and Egypt. This approach was welcomed by the Palestinian Authority, members of the Security Council and donor countries engaged in activities in the Occupied Palestinian Territory.

43. I remain deeply concerned by the state of our collective efforts to advance a lasting political resolution to the conflict, which is now critical, and I urge key regional and international partners to re-engage and to remain steadfast in the pursuit of a two-State solution. The Middle East Quartet remains the best mechanism for achieving this goal. The 2016 report of the Quartet, which remains relevant today, clearly outlines what is needed to advance a sustainable and just peace.

44. I express my deep appreciation to my Special Coordinator, Nickolay Mladenov, for his outstanding service in what remains a challenging context. I am also most grateful to UNRWA Commissioner-General Pierre Krähenbühl for his unwavering commitment and the remarkable work carried out by his staff on behalf of Palestine refugees. I pay tribute, too, to all staff who work under difficult circumstances in the service of the United Nations.

45. I will continue to ensure that the United Nations works towards ending the Israeli occupation that began in 1967 and establishing an independent, democratic, contiguous and viable Palestinian State living side by side with Israel in peace, security and mutual recognition, with Jerusalem as the capital of both States, within the framework of a comprehensive regional settlement consistent with Security Council resolutions 242 (1967), 338 (1973), 1397 (2002), 1515 (2003), 1860 (2009) and 2334 (2016) and in accordance with the Quartet road map, the Arab Peace Initiative, the principle of land for peace and international law.

United Nations A/73/347

General Assembly

Distr.: General
28 August 2018

Original: English

Seventy-third session
Item 74 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Effects of terrorism on the enjoyment of human rights

Report of the Secretary-General

Summary

In its resolution 72/246, the General Assembly strongly condemned all terrorist acts as criminal and unjustifiable, and expressed grave concern about their detrimental effects on the enjoyment of all human rights. The present report on the implementation of that resolution highlights the importance of respecting the human rights of victims and fighting impunity for human rights abuses caused by acts of terrorism and for human rights violations in the context of countering terrorism.

* A/73/150.

18-14101 (E) 040918

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I. Introduction

1. In its resolution 72/246, the General Assembly reiterated its strong and unequivocal condemnation of all acts, methods and practices of terrorism and violent extremism as and when conducive to terrorism in all its forms and manifestations, wherever and by whomsoever committed, regardless of their motivation, while emphasizing that terrorism cannot and should not be associated with any religion, nationality, civilization or ethnic group. The Assembly recognized that terrorism has a detrimental effect on the full enjoyment of political, civil, economic, social and cultural rights and fundamental freedoms, and reaffirmed its commitment to a balanced and integrated implementation of the four pillars of the Global Counter-Terrorism Strategy as adopted in its resolution 60/288 and at its fifth biennial review.[1]

II. Detrimental effect of terrorism on the full enjoyment of human rights and fundamental freedoms

2. Emphasizing the universality, indivisibility, interdependence and interrelatedness of all human rights, the General Assembly reiterated in its resolution 72/246 that all States have an obligation to promote, respect and protect all human rights and fundamental freedoms, to respect the rule of law and to implement their obligations under international human rights and humanitarian law, as applicable. The Assembly also recalled that the promotion and protection of human rights for all and the rule of law are essential to the fight against terrorism and that effective counter-terrorism measures and the protection of human rights are not conflicting goals, but are complementary and mutually reinforcing. It further stressed that each State has a responsibility to protect individuals within its territory and subject to their jurisdiction from acts of terrorism, to take effective counter-terrorism measures and to investigate and prosecute those responsible for carrying out such acts, emphasizing the importance of ensuring that counter-terrorism laws, measures and practices are human rights-compliant.

A. Effects on rights to life, liberty and security of person

3. According to the figures presented in the 2017 Global Terrorism Index, the number of deaths from terrorist attacks in 2016 was 25,673 — a 22 per cent reduction from the number of deaths in 2014 — largely owing to a decrease in acts of terrorism in Afghanistan, Nigeria, Pakistan and the Syrian Arab Republic. At the same time, the Index notes that, in 2016, 106 countries experienced at least one death from acts of terrorism, which was more than in previous years.[2]

4. In its report dated 1 February 2018, the Independent International Commission of Inquiry on the Syrian Arab Republic reported that the battles to recapture Raqqah and Dayr al-Zawr came at a very high cost for civilians. In Raqqah, Islamic State in Iraq and the Levant (ISIL) used snipers and landmines to prevent people from escaping, while those who did not escape were forced to act as human shields.[3] In Dayr al-Zawr, civilians attempting to leave the area were initially asked to pay fines or were beaten, then used as human shields. Similarly, it was reported that ISIL had committed gross abuses of human rights in Mosul, including mass abductions of

[1] See General Assembly resolution 70/291.

[2] Institute for Economics and Peace, *Global Terrorism Index 2017: Measuring and Understanding the Impact of Terrorism* (2017). Available at http://visionofhumanity.org/app/uploads/2017/11/Global-Terrorism-Index-2017.pdf.

[3] See A/HRC/37/72, paras. 38, 48 and 53.

civilians, the use of thousands of civilians as human shields, the killing of civilians, the deliberate shelling of civilians and civilians' residences in what appeared to be a deliberate policy to punish civilians in reclaimed areas, and the indiscriminate targeting of civilians trying to flee areas under its control.[4] In Afghanistan in 2016, an overall 10 per cent increase in the number of civilian casualties resulting from suicide attacks was reported, mainly attributed to several large attacks in Kabul, such as the ISIL-claimed attack against a peaceful demonstration on 23 July, in which 85 civilians were killed and 413 injured.[5] Other armed groups, including the Taliban and Hizb-i Islami, have perpetrated severe human rights abuses, including extrajudicial killings and corporal punishment, such as flogging and stoning.[6]

5. It is precisely to protect the rights to life, liberty and security of person that States have a duty to take effective measures to prevent and counter terrorism. Yet, in responding to the threat of terrorism, some States have adopted measures that can also violate those rights. During the battle against ISIL in Raqqah, international coalition airstrikes continued on a daily basis, despite the widely reported use of human shields by ISIL in those areas. In Dayr al-Zawr, pro-Government forces used prohibited cluster bombs in civilian populated areas.[7] The total number of persons who fled Raqqah and Dayr al-Zawr during those military operations stands at 320,000. In northern Raqqah and Hasakah, the Syrian Democratic Forces reportedly interned 80,000 internally displaced persons, including women, children, the elderly, the infirm and disabled persons, in order to vet them for possible connections to ISIL. The apparent absence of a case-by-case evaluation in relation to every interned individual prior to detention may amount to their arbitrary detention, rendering it unlawful under applicable international human rights law owing to the de facto control of the Syrian Democratic Forces over the territory and persons interned in that territory.[8]

6. In other contexts, human rights treaty bodies have expressed concern at law enforcement officials reportedly engaging in the torture and ill-treatment of detainees while responding to alleged security threats,[9] as well as using excessive force, including lethal force, during special counter-terrorism[10] and related search operations.[11] They have also noted that national security- and conflict-related detainees continue to be most at risk of torture or ill-treatment for the purpose of extracting confessions.[12] In some States, counter-terrorism legislation delays access to counsel or to a medical doctor,[13] which erodes the legal safeguards against torture and can amount to incommunicado detention.[14] The Committee against Torture has expressed its grave concern over dispositions that individuals suspected or charged with crimes of "endangering State security" or "terrorism" can be placed under residential surveillance "at a designated location" for up to six months, which, if combined with the denial of access to legal counsel, could amount to incommunicado

[4] United Nations Assistance Mission for Iraq (UNAMI) and Office of the United Nations High Commissioner for Human Rights (OHCHR), "Report on the protection of civilians in the context of the Ninewa Operations and the retaking of Mosul City, 17 October 2016", www.uniraq.org/images/factsheets_reports/Mosul_report%2017Oct2016-10Jul201731%20October_2017.pdf.

[5] See A/HRC/34/41, paras. 11–12.

[6] See CAT/C/AFG/CO/2, para. 21.

[7] See A/HRC/37/72, paras. 49 and 56.

[8] Ibid., para. 59, and annex III, paras. 13 and 15.

[9] See CAT/C/TUR/CO/4, para. 11; and CCPR/C/MAR/CO/6, para. 23.

[10] See CCPR/C/KGZ/CO/2, para. 13.

[11] See CAT/C/FRA/CO/7, para. 12.

[12] See CAT/C/AFG/CO/2, para. 9.

[13] See CAT/C/FRA/CO/7, para. 10; CAT/C/CHN/CO/5, para. 12; and CAT/C/AFG/CO/2, para. 25.

[14] See CCPR/C/UZB/CO/4, para. 11; and CCPR/C/SUR/CO/3, para. 33.

detention in secret places, placing the detainee at a high risk of torture or ill-treatment.[15]

7. The prohibition of torture is absolute.[16] Moreover, prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment.[17] Access to a lawyer is crucial as a means of preventing torture, as it contributes to a basic level of transparency and contact with the outside world. The absence of such access could leave persons deprived of their liberty completely at the mercy of the detaining authority and prone to abuse.[18]

8. In areas of Nigeria affected by Boko Haram, there has reportedly been an increase in the arbitrary arrest and detention of young men who are suspected by security forces of being members of the group.[19] In several States, counter-terrorism laws allow for long periods of administrative or pretrial detention, sometimes by the military or intelligence agencies, including without charges being brought or judicial oversight.[20] Some laws allow individuals suspected of having links to proscribed groups to be detained for up to a year without trial,[21] while other laws do not place a maximum limit on pretrial detention.[22] In one instance, individuals have been held for as long as 15 years without being indicted, and even those who have been charged have remained in detention without a verdict for as long as 14 years.[23] Irrespective of security-related derogations permitted by some legislation, the prohibition of arbitrary detention is absolute.[24] Judicial review of administrative detention must be exercised by an independent and impartial authority, which must have the power to release the individual and which should be granted within 48 hours, except in absolutely exceptional and justified circumstances.[25] Individuals need to be informed promptly of any charges against them, and the decision to keep a person in detention should be subject to periodic re-evaluation, otherwise it may become arbitrary.[26]

B. Effects on due process and fair trial rights

9. Areas controlled by terrorist groups have been characterized as demonstrating a complete disregard for due process. In its November 2014 report, the Commission of Inquiry noted that, in ISIL-controlled areas of the Syrian Arab Republic, the group had imposed strict social instructions which were brutally enforced through the so-called Al-Hisbah "morality police", with no room for mitigation or dissent.[27] Victims of ISIL punishments described being subjected to a system based on the principle of "guilty until proven innocent". The punishments for acts like smoking cigarettes or theft included beheadings, shootings, stoning, amputations or lashings, imposed during public events. Mutilated bodies were displayed publicly to warn of the

[15] See CAT/C/CHN/CO/5, para. 14.
[16] See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 2 (2); and A/HRC/34/54, paras. 18–20.
[17] See General Assembly resolution 60/148, para. 11.
[18] See A/HRC/13/39/Add.5, para. 102.
[19] See A/HRC/30/67, paras. 60–62.
[20] See CAT/C/PAK/CO/1, para. 12; CCPR/C/POL/CO/7, para. 29; CAT/C/LKA/CO/5, para. 21; and CCPR/C/MAR/CO/6, para. 17.
[21] See CAT/C/PAK/CO/1, para. 12.
[22] See CCPR/C/POL/CO/7, para. 29.
[23] See CAT/C/LKA/CO/5, para. 21.
[24] See Human Rights Committee general comment No. 35 (2014) on liberty and security of person, para. 66.
[25] Ibid., para. 33.
[26] Ibid., para. 12.
[27] See A/HRC/27/CRP.3, paras. 20–21.

consequences of failure to submit to the group's authority.[28] In Iraq, ISIL-established sharia "courts" in Mosul "sentenced" people to cruel, inhuman and degrading treatment, such as stoning, amputation and executions, including of 13 teenage boys accused of watching a football match.[29]

10. In the context of countering terrorism, the importance of equality and non-discrimination in the administration of justice, of a fair and public hearing by an independent and impartial tribunal, and of the presumption of innocence, as well as other fundamental judicial guarantees, has been stressed.[30] Respect for the due process rights of individuals is critical to ensuring that counter-terrorism measures comply fully with the rule of law. Yet, either as a result of the practical application of the law or the lack thereof, individuals accused of acts of terrorism are often not granted the same due process guarantees and fair trial principles as those accused in non-terrorism cases, including limitations on the right to have access to a lawyer, such as permission from security investigators,[31] or the use of military courts to try civilians, given the lack of independence of military judges.[32]

11. In some countries, confessions obtained under duress continue to be admissible in counter-terrorism cases.[33] The ability to convict a suspect on the basis of a confession, without any further supporting evidence, is a key contributing element to the pervasive use of torture.[34] The prohibition of invoking as evidence any statement obtained under torture, as enshrined in article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is one of the most crucial safeguards against abuse in the criminal justice system. According to the Committee Against Torture, a complainant is only required to demonstrate that his or her allegations of torture are well-founded.[35] The failure to verify that a confession has not been obtained through torture, and the use of such in judicial proceedings despite the allegations of torture, amount to a violation of article 15 of the Convention.[36]

12. Trials that fail to conform to due process and fair trial rights are of particular concern in States where the death penalty can be applied, in particular when that sentence is mandatory. Several countries have adopted new laws providing for the death penalty for a number of crimes related to terrorist activities.[37] The imposition of a death sentence upon the conclusion of a trial in which due process and fair trial safeguards have not been respected constitutes a violation of the right to life.[38]

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[28] Ibid., paras. 32–33 and 36.

[29] See A/HRC/28/18, para. 49.

[30] See General Assembly resolution 72/180, twelfth preambular para., and para. 5 (f); and Human Rights Council resolution 35/34, para. 25.

[31] See CAT/C/CHN/CO/5, para. 12.

[32] See CAT/C/PAK/CO/1, para. 12.

[33] See CAT/C/LKA/CO/5, para. 31; CAT/C/PAK/CO/1, para. 12; and CCPR/C/MAR/CO/6, para. 23.

[34] See A/HRC/13/39/Add.5, para. 98; and A/71/298, paras. 96–100.

[35] See CAT/C/30/D/219/2002, para. 6.11. See also CAT/C/29/D/193/2001, para. 6.6.

[36] See CAT/C/53/D/514/2012, para. 8.7. See also African Commission on Human and Peoples' Rights, *Egyptian Initiative for Personal Rights and Interights v. Egypt*, communication No. 334/2006.

[37] See A/HRC/33/20, para. 16.

[38] See Human Rights Committee general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 59; A/HRC/39/19.

C. Effects on freedoms of expression, assembly and association

13. The Human Rights Council has expressed its grave concern that national security and counter-terrorism legislation has been misused to target human rights defenders in a manner contrary to international law.[39] In the name of countering terrorism, serious limitations have been placed on the rights to freedom of opinion, expression, religion or belief, peaceful assembly and association. Since 2001, more than 140 Governments have adopted or adapted counter-terrorism laws to meet new or perceived threats.[40] Some laws have been adopted quickly and without proper consultation.[41] Much of that legislation contains overly broad and vague definitions of terrorism,[42] and more recently of "extremism" or "violent extremism"[43] and "cyber-terrorism",[44] or terms such as "prejudicial acts",[45] "inciting social or class hatred" and "religious hatred or enmity",[46] which are susceptible to wide discretionary and abusive interpretations and can penalize the legitimate exercise of fundamental freedoms. The criminalization of acts that amount to "apology for terrorism", although similar to incitement to terrorism, constitutes an overly broad and indiscriminate range of expression that has raised concerns over racial and religious profiling.[47] The Committee on the Elimination of Racial Discrimination has warned against broad definitions of the term "extremist activity", which can be used arbitrarily to silence individuals, in particular those belonging to groups vulnerable to discrimination, such as ethnic minorities, indigenous peoples or non-citizens.[48]

14. Counter-terrorism legislation can also place serious limitations on the public reporting of acts of terrorism[49] and on the operation of civil society organizations, for example when they are classified as "foreign agents" under counter-extremism legislation.[50] The mere existence of such legislation, or the arrest, detention and prosecution of a few individuals, may not only stigmatize individuals as terrorists but also have a detrimental effect on the exercise of fundamental freedoms, including the right to freedom of expression and assembly.[51]

15. Counter-terrorism legislation with penal sanctions must never be used against individuals who exercise peacefully their right to freedoms of expression, assembly or association. The imperative of effectively countering terrorism cannot lawfully be misused as an excuse to quash public advocacy by peaceful critics, human rights activists or members of minority groups. Those with beliefs that are unpopular with

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[39] See Human Rights Council resolutions 25/18, 27/31, 32/31, and 34/5.

[40] See, for example, www.legifrance.gouv.fr/eli/loi/2017/10/30/INTX1716370L/jo/texte, and United Kingdom of Great Britain and Northern Ireland, "Counter-terrorism and border security bill 2018", 6 June 2018. Available at www.gov.uk/government/collections/counter-terrorism-and-border-security-bill-2018.

[41] See CCPR/C/NZL/CO/6, para. 13.

[42] See CCPR/C/KOR/CO/4, para. 20; and CCPR/C/UZB/CO/4, para. 11.

[43] See CERD/C/RUS/CO/23-24, para. 11; and CCPR/C/TKM/CO/2, para. 14.

[44] See CCPR/C/KOR/CO/4, para. 20.

[45] See CCPR/C/BGD/CO/1, para. 9.

[46] See CCPR/C/KAZ/CO/2, para. 13.

[47] OHCHR, "Preliminary findings of the visit: United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concludes visit to France", 23 May 2018. Available at www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23128&LangID=E.

[48] See CERD/C/RUS/CO/23-24, para. 11.

[49] See CCPR/C/MAR/CO/6, para. 17.

[50] See CERD/C/RUS/CO/23-24, para. 11.

[51] Ibid. See also CCPR/C/MAR/CO/6, para. 17; CAT/C/CHN/CO/5, para. 36; CAT/C/TUR/CO/4, para. 43; CERD/C/ECU/CO/23-24, para. 20; CAT/C/JOR/CO/3, para. 29; CERD/C/EGY/CO/17-22, para. 29; CRC/C/ETH/CO/4-5, para. 35. See also A/HRC/37/51/Add.3, paras. 30–31.

the State have the right to communicate information and opinions and to participate in and contribute to the building of a just society, freely and without fear.

16. The application of the death penalty for overly broad and vaguely defined terrorism-related offences remains a serious concern, particularly where such acts do not meet the threshold of "most serious crimes". In his statement to the sixth World Congress against the Death Penalty,[52] the United Nations High Commissioner for Human Rights stated that some States criminalized the legitimate exercise of fundamental freedoms with overly vague counter-terrorism legislation. It is clear that the participation in peaceful protests or criticism of a Government — whether in private, online or in the media — are neither crimes nor terrorist acts. The threat or use of the death penalty in such cases is an egregious violation of human rights.[53]

D. Effects on the rights to privacy and freedom of movement and to a nationality

17. The General Assembly and the Human Rights Council have urged States to respect the right to privacy, including in the context of digital communication, and called upon States to take measures to ensure that interferences with or restrictions to that right are not arbitrary, are adequately regulated by law and are subject to effective oversight and appropriate redress, and to review their procedures, practices and legislation regarding the surveillance of communications, and their interception and the collection of personal data, including mass surveillance, interception and collection.[54]

18. There are still serious and continuing concerns about the proliferation of laws and surveillance regimes that allow for expansive digital surveillance in the name of countering terrorism, including: (a) laws that authorize separate and discriminatory protection regimes for nationals and non-nationals;[55] (b) laws that compel telecommunications service providers to retain data for long periods and that allow authorities to gain access to that data without judicial authorization; and (c) non-statutory national and international surveillance and interception programmes that allow for the unlimited and indiscriminate surveillance of communications and collection of metadata — sometimes akin to hacking techniques — that lack procedural safeguards, carried out by intelligence agencies or law-enforcement.[56] The Human Rights Committee was also concerned about reports that intelligence agencies were intercepting personal communications and employing hacking techniques without explicit statutory authorization or clearly defined safeguards from abuse. It was further concerned about allegations that companies based in one State party had been providing online surveillance equipment to Governments with records of serious human rights violations, and about the absence of legal safeguards or oversight mechanisms regarding the export of such equipment.[57] It is crucial to ensure that those practices are placed fully within the context of legality, that adequate procedural safeguards and oversight of interception and surveillance are in place, that the programmes comply fully with the principles of proportionality, necessity and

[52] OHCHR, "World Congress against the death penalty", public statement to Minister Brende and others. Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20150&LangID=E.

[53] See A/71/332, para. 33.

[54] See General Assembly resolutions 72/180, para. 5 (i)–(j); 72/284, paras. 19–20; and 70/291, para. 19; and Human Rights Council resolution 35/34, para. 20.

[55] See A/HRC/34/61, para. 33.

[56] Ibid. See also CCPR/C/ITA/CO/6, para. 36; CCPR/C/POL/CO/7, para. 39; CCPR/C/DNK/CO/6, para. 2; CCPR/C/GBR/CO/7, para. 24; and CCPR/C/USA/CO/4, para. 24.

[57] See CCPR/C/ITA/CO/6, para. 36.

non-discrimination, and that the right to a remedy — which requires transparency — is made truly effective.[58]

19. To address the fact that terrorism is increasingly becoming a cross-border activity, and notably the risk caused by foreign fighters, a number of States have adopted measures aimed at preventing persons from travelling to States other than their States of residence or nationality for the purpose of engaging in terrorist acts. In its resolutions 2178 (2014) and 2396 (2017), the Security Council required States to take certain measures to prevent the travel of foreign terrorist fighters, while fully respecting international human rights obligations. Concerns have been expressed that some States have extended the power of police officers to seize and temporarily retain travel documents if there are reasonable grounds to suspect that a person intends to travel abroad to engage in terrorism-related activities, while others have prohibited individuals from travelling, unless they qualify for exemptions.[59] Many States are stripping or revoking the citizenship of those deemed to be foreign fighters, which could potentially render stateless the individuals concerned and their families, including children. Whenever such measures are taken, due process rights must be respected, as well as the right to family life and the best interests of the child.[60] Children born out of rapes by, forced marriages to or voluntary unions with foreign fighters may also find themselves in a legal limbo, either unable to prove their citizenship, or to obtain their parents' citizenship. Given that an officially recognized identity, substantiated by a birth certificate and other identity documents, is essential to realizing most fundamental rights, all births must be registered, and all means given to the parents to prove the citizenship of their children.[61]

20. Some States' attempts to deal with alleged terrorists crossing international borders have also led them to take measures that violate the rights of migrants and refugees. In some cases, individuals fleeing conflicts have seen their absolute right to non-refoulement violated, in the absence of individualized procedures to determine a risk of torture or other ill-treatment,[62] while other States have continued to rely on "deportation with assurances" that may not ensure that the individuals affected will not be subjected to torture or other ill-treatment.[63] In some cases, it is alleged that applications of refugees and asylum seekers have been denied or revoked on the grounds that they pose a threat to national security, without allowing for the applicant to challenge those decisions.[64]

21. The fundamental principle of non-refoulement prohibits the expulsion, return or extradition of persons to a State when there are substantial grounds to believe that they would face the risk of being tortured[65] or other such serious human rights violations.[66] It is the responsibility of the sending State to assess the general situation

[58] See A/72/316, para. 47; and A/HRC/34/61, para. 35.

[59] See CCPR/C/GBR/CO/7, para. 14; CCPR/C/AUS/CO/6, para. 15; and A/70/371, para. 34 (footnote 50).

[60] United Nations Counter-Terrorism Implementation Task Force, *Guidance to States on Human Rights-Compliant Responses to the Threat Posed by Foreign Fighters* (New York, OHCHR, 2018). Available at www.ohchr.org/EN/newyork/Documents/Human-Rights-Responses-to-Foreign-Fighters-web%20final.pdf.

[61] UNAMI and OHCHR, "Promotion and protection of rights of victims of sexual violence captured by ISIL/or in areas controlled by ISIL in Iraq" (Baghdad, 2017). Available at www.ohchr.org/Documents/Countries/IQ/UNAMIReport22Aug2017_EN.pdf, paras. 47–48.

[62] See CAT/C/JOR/CO/3, para. 13.

[63] See CCPR/C/GBR/CO/7, para. 19.

[64] See CAT/C/MKD/CO/3, para. 19.

[65] See A/HRC/13/39/Add.5, para. 238.

[66] European Court of Human Rights, *Case of Othman (Abu Qatada) v. the United Kingdom*, application No. 8139/09, Judgment of 9 May 2012; and CCPR/C/21/Rev.1/Add.13, para. 12.

in the receiving State and the risk facing the particular individual.[67] Even those individuals who do not qualify for or are excluded from refugee status or to whom an exception to the non-refoulement principle applies, pursuant to article 33 (2) of the Convention relating to the Status of Refugees, may still be covered by the prohibition of refoulement under international human rights law.[68] In that respect, the Committee against Torture recommends that national policies determining the applicability of the principle of non-refoulement obligations rely only on "diplomatic assurances" with regard to States that do not systematically violate the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and only after a thorough examination of the merits of each individual case. The Committee also recommends that the sending State party should establish and implement clear procedures for obtaining such assurances, with adequate judicial mechanisms for review and effective post-return monitoring arrangements.[69]

E. Effects on economic, social and cultural rights and the right to development

22. The impact of terrorism on economic, social and cultural rights and the right to development is significant. Terrorist acts seriously affect local and regional economies by destroying critical infrastructure. Terrorist and violent extremist groups create unrest, enhance existing insecurities and exploit development challenges, such as inequalities, poverty and poor governance. Furthermore, they exacerbate grievances and create a vicious cycle of decline that affects already marginalized groups. They also affect the work of United Nations development agencies and target its personnel.[70]

23. Terrorist and violent extremist groups directly attack human rights that are critical to the well-being and development of societies. As some of them consider the right to education a particular threat to the spread of their ideologies, they have prevented children, in particular girls, in their pursuit of education. For example, Boko Haram has targeted public and private schools that they perceived as providing a Western curriculum; it is estimated that, between 2014 and 2017, 1,500 schools were destroyed, with at least 1,280 casualties among teachers and students.[71] Many more children, in particular girls and women, have dropped out of school owing to the Boko Haram insurgency.[72] The right to health is also seriously undermined by terrorist groups and their direct interference with the provision of humanitarian assistance and their direct targeting of humanitarian personnel. Those challenges often overwhelm government resources and exacerbate pre-existing problems already affecting the population.[73] Furthermore, acts of terrorism have a negative impact on cultural life, including through attacks against artists and citizens attending cultural events as well as self-censorship and financial loss for artists and cultural industries.[74]

24. Governments face acute challenges in addressing the long-term economic implications of terrorism from reduced business activity, production and investment, in particular in small or less diversified economies or where tourism is a key economic sector.[75] While terrorism has a global impact, countries suffering from conflict

[67] See also CAT/C/53/D/492/2012; and CAT/C/53/D/473/2011.
[68] See A/71/384, para. 30.
[69] See CAT/C/USA/CO/2, para. 21.
[70] See A/70/674, paras. 16–17.
[71] See S/2017/304, para. 59. See also CRC/C/KEN/CO/3-5, para. 65 (b).
[72] See CEDAW/C/NGA/CO/7-8, para. 33 (a).
[73] See A/HRC/32/32/Add.2, para. 83.
[74] See A/HRC/34/30, para. 45.
[75] The Human Rights Council requested a report from the Advisory Committee on "the negative

experience the most costly economic impacts from terrorism, notably those in the Middle East and North Africa, sub-Saharan Africa and South Asia.[76]

25. Yet it is essential that, in countering terrorism, States fully respect all human rights of the individuals affected. Measures that stigmatize or alienate entire ethnic or religious groups can result in discrimination in access to employment or education.[77] In some countries, military action, armed insurgency and terrorist acts have created a security situation that hampers the delivery of humanitarian assistance and basic social services, with particularly detrimental effects for the enjoyment of human rights by women.[78]

26. Counter-terrorism measures that have primarily affected men — such as enforced disappearances, prolonged detention without trial, extraordinary rendition and forced deportations — have also had an effect on female family members, who bear the burden of harassment, social exclusion and economic hardship, and have undermined their enjoyment of economic, social and cultural rights, such as the right to adequate housing and the right to family life.[79] Seemingly gender-neutral measures — such as evictions and house demolitions used to target or collectively punish communities and other measures that have led to displacement — have deprived women of basic necessities, including adequate food, access to health services and education. Terrorism sanction regimes also have both direct and indirect impacts on the human rights of female family members, including serious economic hardship, acute levels of mental and physical distress and, in some cases, family separation.[80] Measures taken to counter the financing of terrorism, including material assistance provisions and regulations regarding transfers of remittances to areas where terrorist or violent extremist groups operate, have also had a serious impact on women and girls, particularly as they are often placed in positions of support for their families, providing food, clothes and care.[81]

F. Effects on equality and non-discrimination and specific impacts on the rights of women and girls and children

27. Terrorist and violent extremist groups aim at destroying the diverse fabric of communities, including through the systematic and intentional targeting of religious communities, women, children, political activists, journalists, human rights defenders and members of the lesbian, gay, bisexual, transgender and intersex community, who have been victims of abductions, torture and killings.[82]

28. In addition, it is of concern that, in response to terrorism, many States have adopted policies that, directly or indirectly, discriminate against entire groups and communities perceived as presenting a terrorism-related risk. In some cases, profiling has led to the arrest, detention, prosecution, extrajudicial killings and enforced disappearance of individuals simply because they belonged to certain racial, ethnic

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effects of terrorism on the enjoyment of all human rights and fundamental freedoms, with a particular focus on economic, social and cultural rights". See Human Rights Council resolution 34/8.

[76] Institute for Economics and Peace, *Global Terrorism Index* 2017.

[77] See CERD/C/TUR/CO/4-6, para. 29.

[78] See A/64/211, para. 25; A/HRC/34/30, para. 42.

[79] A/64/211, para. 30.

[80] Ibid., para. 40.

[81] Duke Law International Human Rights Clinic and Women Peacemakers Program, *Tightening the Purse Strings: What Countering Terrorism Financing Costs Gender Equality and Security* (2017). Available at https://law.duke.edu/sites/default/files/humanrights/tighteningpursestrings.pdf.

[82] See A/70/674, para. 19.

and religious groups.[83] The former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has reported on the systematic repression of a religious minority and expressed his concern at allegations of detention and prosecution in terrorism courts of peaceful protesters who had requested that the minority be granted greater rights. In another context, the Working Group of Experts on People of African Descent consistently heard complaints of racial profiling in police searches, arbitrary interference in the context of Government counter-terrorism measures and initiatives to clamp down on illegal migrants.[84] States should be particularly mindful of racist hate speech, violence and criminal acts against vulnerable communities, particularly in the aftermath of terrorist acts.[85]

29. In many regions, terrorist and violent extremist groups have deprived women and girls of their human rights, including through forced marriage, restrictions on education and participation in public life as well as sexual and gender-based violence.[86] Under ISIL rule, women and girls have been trafficked and enslaved,[87] confined to their houses, removed from public life and told what to wear and where they could work, thus exacerbating women's subordinate role, reinforcing patriarchal attitudes and demonstrating discriminatory treatment on the basis of gender.[88]

30. Sexual violence is employed as a tactic of terror by terrorist and violent extremist groups and is linked to their strategic objectives, ideology and funding. It is used to advance such tactical imperatives as recruitment, terrorizing populations into compliance, displacing communities from strategic areas, generating revenue through sex trafficking, torture to elicit intelligence, conversion and indoctrination through forced marriage, and to establish, alter or dissolve kinship ties that bind communities.[89]

31. Egregious forms of conflict-related sexual violence — for example, rape, sexual slavery, forced marriage, forced pregnancy and abortion, including as a form of religious and ethnic persecution — have been perpetrated by terrorist and violent extremist groups mainly in Iraq, Mali, Nigeria, Somalia and the Syrian Arab Republic.[90] The Commission of Inquiry considered that ISIL had committed the international crime of genocide against Yazidis, notably including the commission of systematic rape of women and girls as young as 9 years of age,[91] sexual violence, including slavery, enslavement,[92] and torture and inhuman and degrading treatment of women and girls.[93] Boko Haram has subjected women and girls to sexual slavery, sexual violence, forced marriages, forced pregnancies and forced conversions,[94] and it is estimated that at least 7,000 girls and women have suffered from sexual violence

[83] See CERD/C/TUR/CO/4-6, para. 29; CERD/C/KEN/CO/5-7, para. 29; and CERD/C/LKA/CO/10-17, para. 14.

[84] See A/HRC/30/56/Add.2, para. 95.

[85] See CERD/C/GBR/CO/21-23, para. 15; CAT/C/FRA/CO/7, para. 14.

[86] United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), *Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council resolution 1325 (2015)*. Available at www.unwomen.org/~/media/files/un%20women/wps/highlights/unw-global-study-1325-2015.pdf, p. 222.

[87] See S/2016/949, para. 10.

[88] See A/HRC/27/CRP.3, paras. 48–51.

[89] See S/2015/203, para. 83.

[90] Ibid., para. 82.

[91] See A/HRC/32/CRP.2, available from www.ohchr.org/Documents/HRBodies/HRCouncil/ColSyria/A_HRC_32_CRP.2_en.pdf, paras. 114 and 122–123.

[92] Ibid., para. 128.

[93] Ibid., paras. 130–131.

[94] See A/HRC/30/67, para. 38.

since 2009, following abductions and during forced marriage.[95] In Somalia, women and girls in Al-Shabaab-controlled areas are at heightened risk of sexual violence,[96] with forced marriage, trafficking and sexual slavery reportedly perpetrated.[97] Internally displaced women and girls are particularly at risk of sexual and gender-based violence, as well as child marriage, forced marriage, trafficking in persons, forced prostitution and abduction by terrorist groups for use in suicide bombings and sexual slavery.[98]

32. Sexual violence remains underreported in contexts where gender inequality and harmful social norms prevail, owing to stigma, cultural and religious norms, risks of insecurity and fear of retaliation. That leaves survivors often unwilling to return to their communities for fear of "bringing dishonour", or rejected from their communities as a result of guilt by association with a member of a terrorist group or a fear that they have been radicalized. Survivors thus face a risk of double victimization, first by the action of the perpetrator, and second by the reaction of society. Shame and stigma are integral to the logic of sexual violence as a tactic of terrorism, as victims can be turned into outcasts, destroying family and kinship ties that hold communities together.[99] Measures to address ostracism and stigma are necessary.[100]

33. Furthermore, counter-terrorism measures by States have had gendered effects that remain unacknowledged and uncompensated. Women not suspected of terrorism-related offences have been unlawfully detained and ill-treated to gain information about male family members, to compel male terrorism suspects to provide information or confessions or to help resolve the disappearances of family members.[101] Women may also be caught up in counter-terrorism operations in ways that can include being killed, harassed, subjected to violence, intimidated by security forces[102] or displaced from their homes and exposed to additional risks of violence.[103] Broad definitions of offences that criminalize material support and association with terrorists, including for women who fail to report the activities of their husbands suspected of terrorism,[104] combined with an approach to intelligence-gathering based on the mapping of networks of contacts, mean that the family members of alleged terrorists, including wives, can be swept up in counter-terrorism operations without adequate safeguards for their human rights.[105]

34. Women need to be protected against harassment and acts amounting to collective punishments based on the suspicion of having cooperated with terrorist groups, such as the blanket arrest and detention of women and girls.[106] Women who are or were married to members of terrorist groups must not be automatically treated as accomplices, and women who are accused of supporting ISIL must be treated fairly and on the basis of establishing individual criminal responsibility.[107] Furthermore, a

[95] See S/2017/304, para. 54; and CEDAW/C/NGA/CO/7-8, para. 15.
[96] See S/2018/250, para. 61.
[97] Ibid., para. 62.
[98] See CEDAW/C/NER/CO/3-4, para. 10 (b).
[99] See S/2017/249, para. 10.
[100] UNICEF Nigeria and International Alert, *Bad Blood: Perceptions of Children Born of Conflict-Related Sexual Violence and Women and Girls Associated with Boko Haram in Northeast Nigeria — Research Summary* (Abuja and London, 2016). www.international-alert.org/sites/default/files/Nigeria_BadBlood_EN_2016.pdf.
[101] See A/64/211, paras. 30–31.
[102] See CEDAW/C/TUR/CO/7, paras. 36 and 36 (a).
[103] Ibid., para. 36 (b).
[104] See CCPR/C/IRQ/CO/5, para. 9.
[105] See A/64/211, para. 29.
[106] See CEDAW/C/NGA/CO/7-8, para. 15 (b).
[107] UNAMI and OHCHR, "Promotion and protection of rights of victims of sexual violence captured

gendered perspective should be integrated in strategies to prevent violent extremism and to counter terrorism.[108] Women should be included in peace negotiations, conflict prevention, peacebuilding and post-conflict reconstruction.[109]

35. Terrorism also negatively affects children. For example, 142 children were killed in an attack on a school in Pakistan in 2014.[110] Boko Haram has recruited at least 8,000 children since 2009.[111] They have been employed or used as human shields during military operations,[112] subjected to forceful religious conversions, forced marriage, rape, physical and psychological abuse, forced labour or to identify individuals who refused to join the group and unmarried women and girls.[113] Many have lost contact with their families and do not know if their parents are still alive, while others are orphaned.[114] Al-Shabaab has reportedly sent children as young as 9 years of age to the front lines.[115] In the Syrian Arab Republic, there are accounts of the recruitment and use of child soldiers by Jabhat Fatah al-Sham, where dire economic conditions and limited access to education drive children to be recruited for modest salaries to support their families.[116] In 2015, 274 cases of children recruited by ISIL in the Syrian Arab Republic were verified, as well as an increase in the use of children as foreign fighters, with 18 cases involving children as young as 7 years of age. Furthermore, child executioners have appeared in video footage. In Iraq, ISIL has conscripted or enlisted children between the ages of 8 and 18 years to participate in the armed conflict.[117] In two incidents in 2015, more than 1,000 children were reportedly abducted by ISIL from Mosul district.[118]

36. Children caught up in terrorist groups often become victims of serious violence. Survivors live with physical and emotional scars and stigmatization. It is therefore particularly concerning that, in many States, counter-terrorism measures have had serious impacts on the rights of children. It has been that some military responses against violent extremists raise challenges for the protection of children, including when State-allied militia and vigilante groups mobilize and use children, or where children are killed or maimed during military operations.[119] In all cases, the rules of engagement and military manuals should include the customary rule under international humanitarian law to avoid or minimize civilian casualties, taking into account that children may be living in areas under the control of armed groups or may be used on front lines following their abduction or recruitment.[120]

37. Under the Convention on the Rights of the Child, the best interests of the child must be respected at all times and detention should always be used as a last resort and for the shortest possible time.[121] The Committee on the Rights of the Child considers that a minimum age of criminal responsibility below the age of 12 years is not internationally acceptable.[122] Governments should ensure that detention is used only

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by ISIL/or in areas controlled by ISIL in Iraq"; and A/HRC/30/67, para. 81 (f).

[108] See CEDAW/C/CHE/CO/4-5, para. 16 (b).

[109] See CEDAW/C/NGA/CO/7-8, para. 15 (f); and CEDAW/C/CHE/CO/4-5, para. 16 (a).

[110] See CRC/C/PAK/CO/5, para. 22.

[111] See S/2017/304, para. 29.

[112] See A/HRC/30/67, para. 44; and S/2017/304, para. 70.

[113] See S/2017/304, paras. 32 and 70; and A/HRC/30/67, paras. 44–45.

[114] See A/HRC/30/67, para. 46.

[115] See S/2016/1098, paras. 18 and 22.

[116] See A/HRC/34/CRP.3, para. 74.

[117] See A/HRC/28/18, para. 44.

[118] See A/70/836-S/2016/360, paras. 65 and 149–150.

[119] Ibid., para. 14. See also CRC/C/KEN/CO/3-5, para. 65 (a).

[120] Ibid., para. 14.

[121] See in particular articles 2, 3, 6, 12 and 37 of the Convention.

[122] See Committee on the Rights of the Child general comment No. 10 (2007) on children's rights in juvenile justice, para. 32.

for child offenders who have been assessed as posing a real danger to others, and then only as a last resort, for the shortest necessary time and following judicial hearing, with greater resources invested in alternative family- and community-based rehabilitation and reintegration programmes.[123]

38. Some counter-terrorism measures fail to distinguish between juveniles and adults, or treat children associated with terrorist groups as security threats rather than as victims. In Nigeria, boys aged 17 are automatically considered to be "combatants" and children have been deprived of their liberty based on their parents' alleged association with Boko Haram, or used to identify other members of the terrorist group.[124] In Somalia, children have been reportedly captured and detained for their alleged association with Al-Shabaab during military and security operations, including in mass security sweeps or house searches, or detained on suspicion of having a family member who is associated with Al-Shabaab. The lack of habeas corpus and due process for children deprived of their liberty has been an acute concern, with children held for long periods without legal redress,[125] reportedly raped and ill-treated in detention[126] or sentenced to death by military courts for their association with Al-Shabaab.[127] Concern has been expressed about the detention of children allegedly under the same regime as adult detainees.[128] In another country, anti-terrorism legislation enables courts to try juveniles.[129] In some countries, individuals who were under 18 years of age when the crime was committed have been executed for acts covered by extremely broad counter-terrorism laws.

39. Children born out of sexual slavery[130] or of marriages with members of terrorist groups may be perceived as "children of the enemy", and may live with uncertain legal status, while others are removed from schools and physically confined for their protection.[131] The creation of a statutory duty for many public authorities to have due regard for the need to prevent individuals from being drawn into terrorism (the "prevent duty") has created an atmosphere of suspicion towards members of Muslim communities and affected the rights of children by permitting the collection, retention and sharing of information on individuals, particularly children, without their consent or the consent of their parents or legal guardians.[132]

40. The recruitment of children, regardless of the circumstances and methods employed, constitutes a violation of international law and leads to violence and exploitation. The recognition of child recruits as victims of crime is essential to giving them access to their rights as such, including the right to reparations and rehabilitation

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[123] Paulo Sérgio Pinheiro, *World Report on Violence against Children* (Geneva, United Nations). Available at www.unviolencestudy.org. United Nations Interregional Crime and Justice Research Institute, *Children and Counter-Terrorism* (Torino, Italy, 2016), available at www.unicri.it/in_focus/files/Children_counter_terrorism.pdf, which sheds light on the particular vulnerability of children and juveniles in the context of counter-terrorism. In 2016, the Institute launched a two-year research project on assessing the preconditions for developing a juvenile diversion pilot programme for potential foreign terrorist fighters and others at risk, to assess the legal frameworks on counter-terrorism and juvenile justice in five Member States.

[124] See S/2017/304, paras. 37–38 and 41.

[125] See S/2016/1098, para. 33.

[126] Ibid., para. 36.

[127] Ibid., para. 37. See also CRC/C/ARE/CO/2, para. 70.

[128] See CAT/C/AFG/CO/2, para. 17.

[129] See CCPR/C/PAK/CO/1, para. 21.

[130] See CEDAW/C/NGA/CO/7-8, para. 15 (c).

[131] See S/2015/203, para. 61.

[132] See CERD/C/GBR/CO/21-23, para. 18. See also CRC/C/GBR/CO/5, para. 21 (b) and art. 2 (2) of the Convention on the Rights of the Child.

measures.[133] Punitive approaches fail to take into account the rights of the child and have a negative impact on reintegration.[134]

III. Ensuring respect for the human rights of victims and accountability

41. The Human Rights Council, in its resolution 35/34, has stressed the importance of providing victims of terrorism with proper support and assistance while respecting accountability, truth and justice, in accordance with international law. In it, the Council called upon States to ensure that any person whose rights have been violated by measures to counter terrorism or violent extremism conducive to terrorism has access to justice, due process and an effective remedy, and that victims of human rights violations receive adequate, effective and prompt reparations, which should include, as appropriate, restitution, compensation, rehabilitation and guarantees of non-recurrence. It stressed that effective, fair, humane, transparent and accountable justice systems are a fundamental basis of any counter-terrorism strategy.

42. In its resolution 2379 (2017), the Security Council requested me to establish an investigative team, headed by a special adviser, to support domestic efforts to hold ISIL accountable, by collecting, preserving and storing evidence in Iraq of acts that may amount to war crimes, crimes against humanity and genocide committed by ISIL in Iraq. Pursuant to paragraph 4 of that resolution, the terms of reference for the operation of the investigation team that were acceptable to the Government of Iraq were submitted to the Council on 9 February 2018 and approved by it on 13 February 2018. I am taking the necessary steps, measures and arrangements for the speedy establishment and full functioning of the team, including the establishment of a trust fund to receive voluntary contributions from Member States, which will supplement the regular budget funding. On 30 May, I appointed the head of the investigative team.

43. Lessons can be learned from recent experience. Effective accountability requires the constructive engagement of the international community, which also needs to be the driving force to ensure that international humanitarian law and international human rights law, including the relevant principles, rules, standards and best practices, are included fully in any accountability process, in particular with regard to fair trial and due process. It is important to ensure that such suggested mechanisms conform with applicable United Nations regulations, rules, policies and standards. The imposition of the death penalty is increasingly regarded as being incompatible with the fundamental tenets of human rights, in particular human dignity and the right to life, and I therefore continue to recommend that States that continue to impose and implement death sentences establish a moratorium on executions with a view to abolishing the death penalty.[135]

44. To respect fully the rights of victims after a terrorist attack, States should systematically open a prompt, thorough, effective and independent criminal investigation on each terrorist act, even in situations where the perpetrator dies by suicide or was killed during the act, and regardless of whether the perpetrator has been identified. Furthermore, victims and their families must be kept fully informed of the progress of the investigation, and the process must allow for their views and

[133] See A/70/836-S/2016/360, para. 16. See also CAT/C/AFG/CO/2, para. 17; Human Rights Council resolution 35/34, para. 19; General Assembly resolution 72/284, para. 77; and General Assembly resolution 70/291, para. 18.

[134] Article 40 (1) of the Convention on the Rights of the Child. See also Human Rights Council resolution 31/30.

[135] See A/HRC/36/26, para. 53.

concerns to be presented and considered at appropriate stages of the investigation and the criminal proceeding, without prejudice to the accused.[136]

45. In Afghanistan in 2017, 170 people were killed on average every month by mines, explosive remnants of war and improvised explosive devices, making up nearly 10 per cent of all civilian casualties of conflict. The United Nations Mine Action Service provides technical advisory assistance to the Government's Directorate of Mine Action Coordination on this issue and is advocating for increased funding to support the immediate and long-term rehabilitation needs of victims of terrorism.

46. At the regional level, the European Court of Human Rights continued to uphold human rights and accountability in the counter-terrorism context. Following the establishment of victims' right to truth under article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (also known as the European Convention on Human Rights),[137] and findings that European States' complicity in extraordinary rendition programmes had violated the absolute prohibition of torture and ill treatment,[138] the Court issued two important judgments relating to countries that had hosted "black sites" in their territory. In both cases,[139] the Court found that, through their cooperation with extraordinary renditions of the applicants, the States had subjected the applicants to an extremely harsh detention regime, causing intense physical and mental suffering that amounted to inhuman treatment contrary to article 3 of the Convention. The cases are critical not only in establishing the responsibility of States for torture in countering terrorism, but also in ending the impunity that continues to surround extraordinary renditions.

47. Despite those positive developments, it is clear that much progress still needs to be made, as was noted by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism following a recent country visit, who found that the rights and needs of victims had not been fully addressed and still required significant legal and policy attention.[140] The Human Rights Committee has expressed its concern about the limited progress in investigating serious human rights violations, including unlawful and extrajudicial killings, abductions, torture and ill-treatment, secret detention and enforced disappearance perpetrated by State agents during security and counter-terrorism operations.[141] The Special Rapporteur has also noted that, despite the high number of formal complaints of torture, not a single individual appeared to have been convicted for that serious crime.

48. The Security Council, in its resolution 2331 (2016), called upon Member States to treat victims of sexual violence by terrorist groups as victims of crime. With regard to sexual and gender-based violence, positive initiatives include the fund for

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[136] Laura Dolci, *A Victimless Crime? A Narrative on Victims of Terrorism to Build a Case for Support* (Oisterwijk, Netherlands, Wolf Legal Publishers, 2018).

[137] European Court of Human Rights, *Case of El-Masri v. the former Yugoslav Republic of Macedonia*, application No. 39630/09, Judgment of 13 December 2012.

[138] European Court of Human Rights, *Case of Al Nashiri v. Poland*, application no. 28761/11, Judgment of 24 July 2014, and *Case of Husayn (Abu Zubaydah) v. Poland*, application No. 7511/13, Judgment of 24 July 2014.

[139] European Court of Human Rights, *Case of Al Nashiri v. Romania*, application No. 33234/12, Judgment of 31 May 2018 and *Case of Husayn (Abu Zubaydah) v. Lithuania*, application No. 46454/11, Judgment of 31 May 2018.

[140] OHCHR, "Human rights and counter-terrorism: United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concludes visit to Belgium", 31 May 2018. Available at www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23164&LangID=E.

[141] See CCPR/C/RUS/CO/7. See also CAT/C/TUR/CO/4, para. 13.

sponsoring emergency services, such as the provision of medical treatment and temporary accommodation for women survivors of life-threatening acts of violence, which was inaugurated on 31 January 2016 by the President of Afghanistan.[142] However, accountability for sexual and gender-based violence is still an outstanding issue in many States, as evidenced by the lack of independent mechanisms to investigate all allegations of gender-based violence and other rights violations against women and girls by security forces and terrorist groups.[143] In one country, most cases of sexual violence are handled according to a system of customary practices that focuses on the clan rather than the survivor and often results in double victimization for survivors, who may be forced to marry their assailant, while imposing no sanctions to deter future crimes.[144]

49. A human rights-based approach to victims necessarily includes ensuring accountability. The Human Rights Council has urged States to undertake prompt, independent and impartial fact-finding inquiries whenever there are plausible indications of breaches of their obligations under international law as a result of any measures taken or means employed to counter terrorism, and to ensure accountability for those responsible for violations that amount to crimes under national or international law.[145] States must ensure that action is taken so that violations and abuses are prevented and not repeated, to promptly, thoroughly, independently and impartially investigate allegations of such violations and abuses, to punish perpetrators and to ensure access to remedy and redress for victims. The establishment of 21 August as the International Day of Remembrance of and Tribute to the Victims of Terrorism underscores the commitment of the international community to honour and support the victims and survivors of terrorism and to promote and protect the full enjoyment of their human rights and fundamental freedoms.[146]

IV. Conclusions and recommendations

50. **Acts of terrorism have a grave impact on the enjoyment of civil, cultural, economic, political and social rights across the globe. Acts of terrorism destroy lives, family ties and the fabric of communities. They sow fear in individuals and communities, demolish livelihoods and whole economies. That is why States not only have a right, but also a duty to prevent and counter acts of terrorism, as part of their human rights obligation to protect the life, liberty and security of all individuals under their jurisdiction.**

51. **In accordance with the first and fourth pillars of the Global Counter-Terrorism Strategy, an approach based on human rights and the rule of law is the only way to effectively counter terrorism. Such an approach not only maintains the trust and support of societies which is critical to any counter-terrorism strategy, it also prevents narratives of victimization, which lead to marginalization and violent extremism, from taking hold. States must thus ensure that the measures they adopt to counter terrorism comply with, and are fully grounded in, international human rights law.**

52. **The rights of victims are central to any counter-terrorism effort. Ensuring accountability and fighting impunity for human rights abuses caused by acts of terrorism and for human rights violations caused by States' measures to counter terrorism is necessary to guarantee the rights of victims to the truth and their**

[142] See A/HRC/34/41, para. 43.
[143] See CEDAW/C/NER/CO/3-4, para. 10 (c).
[144] See S/2018/250, para. 61.
[145] See Human Rights Council resolution 34, para. 24.
[146] See General Assembly resolution 72/165, para. 1.

right to remedy. It is also a critical aspect of ensuring that violations and abuses are not repeated and thus key to preventing future acts of terrorism. A failure to address effectively and adequately those issues will provide fertile ground for those intent on resorting to terrorism, as narratives of victimization take hold and real or perceived grievances are exploited by terrorists to garner support among vulnerable and alienated populations.[147]

53. **The General Assembly and the Human Rights Council have repeatedly called upon States to continue to implement the Strategy and its four pillars in a balanced and integrated way. As my predecessor noted in the Plan of Action to Prevent Violent Extremism, the last decade has seen a strong emphasis on the implementation of measures under pillar II, while pillars I and IV, relating to the conditions conducive to terrorism and to human rights, respectively, have often been overlooked.**[148]

54. **The renewed United Nations counter-terrorism architecture must continue and deepen its cooperation with States and regional and national partners, as well as develop new partnerships, particularly with civil society, women, young people and victims, to implement fully and equally all aspects of the Strategy.**

55. **Failing to respect international human rights law in the fight against terror is not only against the letter and spirit of the Strategy, it runs against the Security Council directive to States to ensure that their efforts to combat terrorism are in accordance with the Charter of the United Nations and their obligations under international law, including international human rights law, international refugee law and international humanitarian law.**[149]

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[147] United Nations Development Programme (UNDP) Regional Bureau for Africa, *Journey to Extremism in Africa: Drivers, Incentives and the Tipping Point for Recruitment* (New York, 2017). Available at http://journey-to-extremism.undp.org.

[148] See A/70/674, para. 7.

[149] See, for example, Security Council resolutions 2199 (2015), 2253 (2015), 2368 (2017), 2385 (2017) and 2396 (2017).

United Nations A/73/348

General Assembly

Distr.: General
29 August 2018

Original: English

Seventy-third session
Item 74 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Promotion and protection of the right to freedom of opinion and expression**

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report prepared by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, submitted in accordance with Human Rights Council resolution 34/18. In the present report, the Special Rapporteur explores the implications of artificial intelligence technologies for human rights in the information environment, focusing in particular on rights to freedom of opinion and expression, privacy and non-discrimination.

* A/73/150.

** The present report was submitted after the deadline in order to reflect the most recent developments.

18-14238 (E) 190918

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Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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I. Introduction

1. Artificial intelligence is increasingly influencing the information environment worldwide. It enables companies to curate search results and newsfeeds as well as advertising placement, organizing what users see and when they see it. Artificial intelligence technologies are used by social media companies to help moderate content on their platforms, often acting as the first line of defence against content that may violate their rules. Artificial intelligence recommends people to friend or follow, news articles to read and places to visit or eat, shop or sleep. It offers speed, efficiency and scale, operating to help the largest companies in the information and communications technology sector manage the huge amounts of content uploaded to their platforms every day. Artificial intelligence technologies may enable broader and quicker sharing of information and ideas globally, a tremendous opportunity for freedom of expression and access to information. At the same time, the opacity of artificial intelligence also risks interfering with individual self-determination, or what is referred to in the present report as "individual autonomy and agency".[1] A great global challenge confronts all those who promote human rights and the rule of law: how can States, companies and civil society ensure that artificial intelligence technologies reinforce and respect, rather than undermine and imperil, human rights?

2. The present report does not pretend to be the last word in artificial intelligence and human rights. Rather, it tries to do three things: define key terms essential to a human rights discussion about artificial intelligence; identify the human rights legal framework relevant to artificial intelligence; and present some preliminary recommendations to ensure that, as the technologies comprising artificial intelligence evolve, human rights considerations are baked into that process. The report should be read as a companion to my most recent report to the Human Rights Council (A/HRC/38/35), in which a human rights approach to online content moderation was presented.[2]

II. Understanding artificial intelligence

A. What is artificial intelligence?

3. Artificial intelligence is often used as shorthand for the increasing independence, speed and scale connected to automated, computational decision-making. Artificial intelligence is not one thing only, but rather refers to a "constellation" of processes and technologies enabling computers to complement or replace specific tasks otherwise performed by humans, such as making decisions and solving problems.[3] "Artificial intelligence" can be a problematic term, suggesting as it does that machines can operate according to the same concepts and rules of human intelligence. They cannot. Artificial intelligence generally optimizes the work of

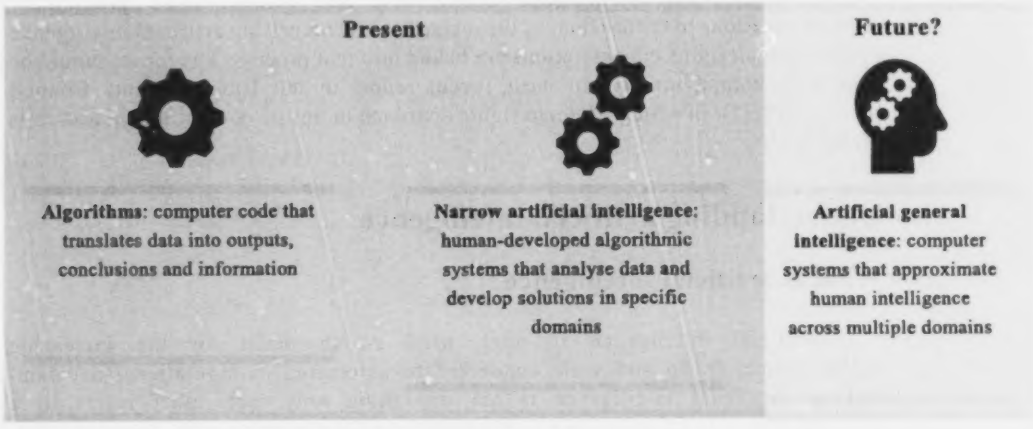
[1] See Mariarosaria Taddeo and Luciano Floridi, "How AI can be a force for good", *Science*, vol. 361, No. 6404 (24 August 2018). Available at http://science.sciencemag.org/content/361/6404/751.full.

[2] The present report benefited from an expert consultation conducted in Geneva in June 2018, supported with a grant from the European Union, and the input from experts as part of the development of document A/HRC/35/38 in 2017 and 2018. I especially wish to thank Carly Nyst and Amos Toh, who contributed essential research and drafting to this project.

[3] See AI Now, "The AI now report: the social and economic implications of artificial intelligence technologies in the near term", 2016. Available at https://ainowinstitute.org/AI_Now_2016_Report.pdf; United Kingdom of Great Britain and Northern Ireland House of Lords Select Committee on Artificial Intelligence, "AI in the United Kingdom: ready, willing and able?", 2018.

computerized tasks assigned by humans through iterative repetition and attempt. That said, it is the language of the culture, of companies and of governments, and I use it here.

4. Popular culture often suggests that society is headed towards artificial general intelligence, a still-distant capability (the "singularity") for a computer system to approximate or surpass human intelligence across multiple domains. [4] For the foreseeable future, there will continue to be advancements with respect to narrow artificial intelligence, according to which computer systems perform programmed tasks (human-developed algorithms) in specific domains. Narrow artificial intelligence underpins, for example, voice assistance on mobile devices and customer service chatbots, online translation tools and self-driving cars, search engine results and mapping services. Machine-learning is a category of narrow artificial intelligence techniques used to train algorithms to use datasets to recognize and help solve problems. For example, artificial intelligence-powered smart home devices are continuously "learning" from data collected about everyday language and speech patterns in order to process and respond to questions from their users more accurately. In all circumstances, humans play a critical role in designing and disseminating artificial intelligence systems, defining the objectives of an artificial intelligence application and, depending on the type of application, selecting and labelling datasets and classifying outputs. Humans always determine the application and use of artificial intelligence outputs, including the extent to which they complement or replace human decision-making.


Present
Future?
Algorithms: computer code that translates data into outputs, conclusions and information
Narrow artificial intelligence: human-developed algorithmic systems that analyse data and develop solutions in specific domains
Artificial general intelligence: computer systems that approximate human intelligence across multiple domains

5. At the foundation of artificial intelligence are algorithms, computer code designed and written by humans, carrying instructions to translate data into conclusions, information or outputs. Algorithms have long been essential to the operation of everyday systems of communication and infrastructure. The enormous volume of data in modern life and the capacity to analyse it fuel artificial intelligence. The private sector certainly sees data that way: the more data available to feed algorithms and the better the quality of that data, the more powerful and precise the algorithms can become. Algorithmic systems can analyse huge volumes of data rapidly, enabling artificial intelligence programmes to perform decision-making functions that were previously the domain of humans acting without computational tools.

[4] Article 19 and Privacy International, "Privacy and freedom of expression in an age of artificial intelligence", London, 2018.

Design stage
Humans procure artificial intelligence systems and define their intentions.
Deployment stage
Humans define the input and design the algorithm.
Humans clean and label the input data.
In some cases, humans define the outputs of artificial intelligence systems.
Artificial intelligence systems define the model used and algorithms learn and adapt independently.
Implementation stage
Humans decide how to apply and use the outputs.

Human agency is integral to artificial intelligence, but the distinctive characteristics of artificial intelligence deserve human rights scrutiny with respect to at least three of its aspects: automation, data analysis and adaptability.[5]

6. **Automation**. Automation removes human intervention from parts of a decision-making process, completing specific tasks with computational tools. This can have positive implications from a human rights perspective if a design limits human bias. For example, an automated border entry system may flag individuals for scrutiny based on objective features such as criminal history or visa status, limiting reliance on subjective (and bias-prone) assessments of physical presentation, ethnicity, age or religion. Automation also enables the processing of vast amounts of data at a speed and scale not achievable by humans, potentially serving public safety, health and national security. However, automated systems rely on datasets that, in their design or implementation, may allow for bias and thus produce discriminatory effects. For instance, the underlying criminal history or visa data suggested above itself may incorporate biases. Excessive reliance on and confidence in automated decisions and a failure to recognize this foundational point may in turn undermine scrutiny of artificial intelligence outcomes and disable individuals from accessing remedies to adverse artificial intelligence-driven decisions. Automation may impede the

[5] Council of Europe, *Algorithms and Human Rights: Study on the Human Rights Dimensions of Automated Data Processing Techniques and Possible Regulatory Implications*, Council of Europe study, No. DGI (2017) 12, 2018. Available at https://www.coe.int/en/web/freedom-expression/-/algorithms-and-human-rights-a-new-study-has-been-published.

transparency and scrutability of a process, preventing even well-meaning authorities from providing an explanation of outcomes.[6]

7. **Data analysis**. Vast datasets support most artificial intelligence applications. Any dataset could form the basis of an artificial intelligence system, from Internet browsing habits to data on traffic flows on highways. Some datasets contain personal data, while many others involve anonymized data. The use by artificial intelligence of such datasets raises serious concerns, including regarding their origins, accuracy and individuals' rights over them; the ability of artificial intelligence systems to de-anonymize anonymized data; and biases that may be ingrained within the datasets or instilled through human training or labelling of the data. Artificial intelligence evaluation of data may identify correlations but not necessarily causation, which may lead to biased and faulty outcomes that are difficult to scrutinize.

8. **Adaptability**. Machine-learning artificial intelligence systems are adaptable, as the algorithms that power them are able to progressively identify new problems and develop new answers. Depending on the level of supervision, systems may identify patterns and develop conclusions unforeseen by the humans who programmed or tasked them. This lack of predictability holds the true promise of artificial intelligence as a transformational technology, but it also illuminates its risks: as humans are progressively excluded from defining the objectives and outputs of an artificial intelligence system, ensuring transparency, accountability and access to effective remedy becomes more challenging, as does foreseeing and mitigating adverse human rights impacts.

B. Artificial intelligence and the information environment

9. Artificial intelligence has particularly important, and sometimes problematic, consequences for the information environment, the complex ecosystem of technologies, platforms and private and public actors that facilitate access to and dissemination of information through digital means. Algorithms and artificial intelligence applications are found in every corner of the Internet, on digital devices and in technical systems, and in search engines, social media platforms, messaging applications and public information mechanisms. In keeping with the focus of my mandate, I note the following three applications of artificial intelligence in the information environment that raise concerns:

10. **Content display and personalization**. Social media and search platforms increasingly dominate how individuals access and share information and ideas and how news is disseminated. Algorithms and artificial intelligence applications determine how widely, when and with which audiences and individuals content is shared. Massive datasets that combine browsing histories, user demographics, semantic and sentiment analyses and numerous other factors feed into increasingly personalized algorithmic models to rank and curate information, that is, to show information to individuals or implicitly exclude it. Paid, sponsored or hashtagged content may be promoted to the exclusion or demotion of other content. Social media newsfeeds display content according to subjective assessments of how interesting or engaging content might be to a user; as a result, individuals may be offered little or no exposure to certain types of critical social or political stories and content posted

[6] Council of Europe, *Algorithms and Human Rights*.

to their platforms.[7] Artificial intelligence shapes the world of information in a way that is opaque to the user and often even to the platform doing the curation.

11. Online search is one of the most pervasive forms of artificial intelligence-powered content display and personalization. Search engines deliver results for queries (and complete or predict queries) using artificial intelligence systems that process extensive data about individual and aggregate users. Because poorly ranked content or content entirely excluded from search results is unlikely to be seen, the artificial intelligence applications for search have enormous influence over the dissemination of knowledge.[8] Content aggregators and news sites[9] similarly choose which information to display to an individual based not on recent or important developments, but on artificial intelligence applications that predict users' interests and news patterns based on extensive datasets. Consequently, artificial intelligence plays a large but usually hidden role in shaping what information individuals consume or even know to consume.

12. Artificial intelligence in the field of content display is driving towards greater personalization of each individual's online experience; in an era of information abundance,[10] personalization promises to order the chaos of the Internet, allowing individuals to find requested information. Benefits may include the ability to access information and services in a greater range of languages[11] or information that is more timely and relevant to one's personal experience or preferences. Artificial intelligence-driven personalization may also minimize exposure to diverse views, interfering with individual agency to seek and share ideas and opinions across ideological, political or societal divisions. Such personalization may reinforce biases and incentivize the promotion and recommendation of inflammatory content or disinformation in order to sustain users' online engagement.[12] To be sure, all sorts of social and cultural settings may limit an individual's exposure to information. But by optimizing for engagement and virality at scale, artificial intelligence-assisted personalization may undermine an individual's choice to find certain kinds of content. This is especially so because algorithms typically will deprioritize content with lower levels of engagement, banishing independent and user-generated content into

[7] World Wide Web Foundation, "The invisible curation of content: Facebook's News Feed and our information diets", 22 April 2018. Available at https://webfoundation.org/research/the-invisible-curation-of-content-facebooks-news-feed-and-our-information-diets/.

[8] Council of Europe, *Algorithms and Human Rights*.

[9] For example, see "How Reuters's revolutionary AI system gathers global news," MIT Technology Review, 27 November 2017. Available at https://www.technologyreview.com/s/609558/how-reuterss-revolutionary-ai-system-gathers-global-news/; Paul Armstrong and Yue Wang, "China's $11 billion news aggregator Jinri Toutiao is no fake," *Forbes*, 26 May 2017. Available at https://www.forbes.com/sites/ywang/2017/05/26/jinri-toutiao-how-chinas-11-billion-news-aggregator-is-no-fake/#1d8b97804d8a.

[10] Carly Nyst and Nick Monaco, *State-Sponsored Trolling: How Governments are Deploying Disinformation as Part of Broader Digital Harassment Campaigns* (Palo Alto, Institute for the Future, 2018).

[11] World Wide Web Foundation, "Artificial intelligence: the road ahead in low- and middle-income countries", Washington, D.C., 2017.

[12] Zeynep Tufekci, "YouTube, the great radicaliser", *New York Times*, 10 March 2018. Available at https://www.nytimes.com/2018/03/10/opinion/sunday/youtube-politics-radical.html; James Williams, *Stand Out of our Light: Freedom and Resistance in the Attention Economy* (Cambridge, Cambridge University Press, 2018).

obscurity.[13] Savvy actors can exploit rule-based artificial intelligence systems optimized for engagement to gain higher levels of exposure, and by appropriating popular hashtags or using bots, they can achieve outsized online reach to the detriment of information diversity.

13. **Content moderation and removal**. Artificial intelligence helps social media companies to moderate content in accordance with platform standards and rules, including spam detection, hash-matching technology (using digital fingerprints to identify, for instance, terrorist or child exploitation content), keyword filters, natural language processing (by which the nature of the content is assessed for prohibited words or imagery) and other detection algorithms. Artificial intelligence may be used to subject user accounts to warnings, suspension or deactivation on the basis of violations of terms of service or may be employed to block or filter websites on the basis of prohibited domain data or content. Social media companies use artificial intelligence to filter content across the range of their rules (from nudity to harassment to hate speech and so on), although the extent to which such companies rely on automation without human input on specific cases is not known.[14]

14. Support and pressure for increasing the role of artificial intelligence come from both the private and public sectors. Companies claim that the volume of illegal, inappropriate and harmful content online far exceeds the capabilities of human moderation and argue that artificial intelligence is one tool that can assist in better tackling this challenge. According to some platforms, artificial intelligence is not only more efficient in identifying inappropriate (according to their rules) and illegal content for removal (usually by a human moderator) but also has a higher accuracy rate than human decision-making. States, meanwhile, are pressing for efficient, speedy automated moderation across a range of separate challenges, from child sexual abuse and terrorist content, where artificial intelligence is already extensively deployed, to copyright and the removal of "'extremist" and "hateful" content.[15] The European Commission Recommendation on measures to further improve the effectiveness of the fight against illegal content online of March 2018 calls upon Internet platforms to use automatic filters to detect and remove terrorist content, with

[13] Recently, some tech platforms have indicated their intention to move away from "engagement" — driven personalization to personalization which prioritizes the quality of a user's experience online; see Julia Carrie Wong, "Facebook overhauls News Feed in favour of 'meaningful social interactions'", *The Guardian*, 11 January 2018. Available at https://www.theguardian.com/technology/2018/jan/11/facebook-news-feed-algorithm-overhaul-mark-zuckerberg. However, without thorough transparency, reporting and metrics around how AI systems make and implement such assessments, it is difficult to assess whether this change is having a demonstrable effect on internet users' experience.

[14] An Instagram tool, Deep Text, attempts to judge the "toxicity" of the context, as well as permitting users to customize their own word and emoji filers, and also assesses user relationship in a further attempt to establish context (such as whether a comment is just a joke between friends). Andrew Hutchison, "Instagram's rolling out new tools to remove 'toxic comments'", Social Media Today, 30 June 2017. Available at https://www.socialmediatoday.com/social-networks/instagrams-rolling-out-new-tools-remove-toxic-comments.

[15] The United Kingdom reportedly developed a tool to automatically detect and remove terrorist content at the point of upload. See, for example, Home Office, "New technology revealed to help fight terrorist content online", press release, 13 February 2018. See European Commission, proposal for a directive of the European Parliament and of the Council on Copyright in the Digital Single Market, COM(2016) 593 final, art. 13; Letter from the Special Rapporteur to the President of the European Commission, reference No. OL OTH 41/2018, 13 June 2018. Available at https://www.ohchr.org/Documents/Issues/Opinion/Legislation/OL-OTH-41-2018.pdf.

human review in some cases suggested as a necessary counterweight to the inevitable errors caused by the automated systems.[16]

15. Efforts to automate content moderation may come at a cost to human rights (see A/HRC/38/35, para. 56). Artificial intelligence-driven content moderation has several limitations, including the challenge of assessing context and taking into account widespread variation of language cues, meaning and linguistic and cultural particularities. Because artificial intelligence applications are often grounded in datasets that incorporate discriminatory assumptions,[17] and under circumstances in which the cost of over-moderation is low, there is a high risk that such systems will default to the removal of online content or suspension of accounts that are not problematic and that content will be removed in accordance with biased or discriminatory concepts. As a result, vulnerable groups are the most likely to be disadvantaged by artificial intelligence content moderation systems. For example, Instagram's DeepText identified "Mexican" as a slur because its datasets were populated with data in which "Mexican" was associated with "illegal", a negatively coded term baked into the algorithm.[18]

16. Artificial intelligence makes it difficult to scrutinize the logic behind content actions. Even when algorithmic content moderation is complemented by human review — an arrangement that large social media platforms argue is increasingly infeasible on the scale at which they operate — a tendency to defer to machine-made decisions (on the assumptions of objectivity noted above) impedes interrogation of content moderation outcomes, especially when the system's technical design occludes that kind of transparency.

17. **Profiling, advertising and targeting**. Advances in artificial intelligence have both benefited from and further incentivized the data-driven business model of the Internet, namely, that individuals pay for free content and services with their personal data. With the vast data resources amassed from years of online monitoring and profiling, companies are able to equip artificial intelligence systems with rich datasets to develop ever more precise prediction and targeting models. Today, advertising by private and public actors can be achieved at an individual level; consumers and voters are the subject of "microtargeting" designed to respond to and exploit individual idiosyncrasies.

18. Artificial intelligence-driven targeting incentivizes the widespread collection and exploitation of personal data and increases the risk of manipulation of individual users through the spread of disinformation. Targeting can perpetuate discrimination, as well as users' exclusion from information or opportunities by, for example, permitting targeted job and housing advertisements that exclude older workers,

[16] Commission recommendation of 1 March 2018 on measures to effectively tackle illegal content online (C(2018) 1177 final). Available at https://ec.europa.eu/digital-single-market/en/news/commission-recommendation-measures-effectively-tackle-illegal-content-online; see also Daphne Keller, "Comment in response to European Commission's March 2018 recommendation on measures to further improve the effectiveness of the fight against illegal content online", Stanford Law School, Center for Internet and Society, 29 March 2018. Available at http://cyberlaw.stanford.edu/publications/comment-response-european-commissions-march-2018-recommendation-measures-further.

[17] See Aylin Caliskan, Joanna Bryson and Arvind Narayanan, "Semantics derived automatically from language corpora contain human-like biases", *Science*, vol. 356, No. 6334 (14 April 2017); Solon Barocas and Andrew Selbst, "Big data's disparate impact", California Law Review, vol. 104, No. 671 (2016).

[18] Nicholas Thompson, "Instagram's Kevin Systrom wants to clean up the &#%@! Internet", Wired, 14 August 2017. Available at https://www.wired.com/2017/08/instagram-kevin-systrom-wants-to-clean-up-the-internet/.

women or ethnic minorities.[19] Rather than individuals being exposed to parity and diversity in political messaging, for example, the deployment of microtargeting through social media platforms is creating a curated worldview inhospitable to pluralistic political discourse.

III. A human rights legal framework for artificial intelligence

A. Scope of human rights obligations in the context of artificial intelligence

19. Artificial intelligence tools, like all technologies, must be designed, developed and deployed so as to be consistent with the obligations of States and the responsibilities of private actors under international human rights law. Human rights law imposes on States both negative obligations to refrain from implementing measures that interfere with the exercise of freedom of opinion and expression and positive obligations to promote rights to freedom of opinion and expression and to protect their exercise.

20. With respect to the private sector, States are bound to guarantee respect for individual rights,[20] especially the rights to freedom of opinion and expression, including by protecting individuals from infringing acts committed by private parties (article 2 (1) of the International Covenant on Civil and Political Rights). States can meet this obligation through legal measures to restrict or influence the development and implementation of artificial intelligence applications, through policies regarding the procurement of artificial intelligence applications from private companies by public sector actors, through self- and co-regulatory schemes and by building the capacity of private sector companies to recognize and prioritize the rights to freedom of opinion and expression in their corporate endeavours.

21. Companies also have responsibilities under human rights law that should guide their construction, adoption and mobilization of artificial intelligence technologies (A/HRC/38/35, para. 10). The Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework provide a "global standard of expected conduct for all businesses wherever they operate" (principle 11), including social media and search companies. To adapt the conclusions from the Guiding Principles to the domain of artificial intelligence (ibid., para. 11), the Guiding Principles require that companies, at a minimum, make high-level policy commitments to respect the human rights of their users in all artificial intelligence applications (principle 16); avoid causing or contributing to adverse human rights impacts through their use of artificial intelligence technology and prevent and mitigate any adverse effects linked to their operations (principle 13); conduct due diligence on artificial intelligence systems to identify and address actual and potential human rights impacts (principles 17–19); engage in prevention and mitigation strategies (principle 24); conduct ongoing review of artificial intelligence-related activities, including through stakeholder and public consultation (principles 20–21),

[19] Julia Angwin, Noam Scheiber and Ariana Tobin, "Dozens of companies are using Facebook to exclude older workers from job ads", ProPublica, 20 December 2017. Available at https://www.propublica.org/article/facebook-ads-age-discrimination-targeting; Julia Angwin, Ariana Tobin and Madeleine Varner, "Facebook (still) letting housing advertisers exclude users by race", ProPublica, 21 November 2017. Available at https://www.propublica.org/article/facebook-advertising-discrimination-housing-race-sex-national-origin.

[20] See principle 3 of the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31) and A/HRC/38/35, paras. 6–8.

and provide accessible remedies to remediate adverse human rights impacts from artificial intelligence systems (principles 22, 29 and 31).

B. Right to freedom of opinion

22. The freedom to hold opinions without interference is an absolute right, enshrined in article 19 (1) of the International Covenant on Civil and Political Rights and article 19 of the Universal Declaration of Human Rights. It "permits no exception or restriction," whether "by law or other power".[21] In my 2015 report to the Human Rights Council on encryption and anonymity in digital communications (A/HRC/29/32), I observed that the ways in which information is stored, transmitted and secured in the digital age uniquely affect the exercise of the right to hold opinions. Search queries, browsing activities, email and text communications, and documents and mementos held in the cloud — together, these digital activities and records form the fabric of the opinions users hold (ibid., para. 12). Both State and non-State actors may interfere with these mechanics and processes of forming and holding opinions.

23. An essential element of the right to hold an opinion is the "right to form an opinion and to develop this by way of reasoning".[22] The Human Rights Committee has concluded that this right requires freedom from undue coercion in the development of an individual's beliefs, ideologies, reactions and positions.[23] Accordingly, forced neurological interventions, indoctrination programmes (such as "re-education camps") or threats of violence designed to compel individuals to form particular opinions or change their opinion violate article 19 (1) of the Covenant. The Committee has also found that coercive "inducements of preferential treatment" may rise to a level of persuasion that interferes with the right to form and hold opinions (see CCPR/C/78/D/878/1999).

24. The intersection of technology and content curation raises novel questions about the types of coercion or inducement that may be considered an interference with the right to form an opinion. Content curation has long informed the capacity of the individual to form opinions: for example, media outlets elevate particular stories to the front page with the intention of shaping and influencing individual knowledge about significant news of the day. Commercial advertising has also sought to induce favourable opinions of and cultivate desire for particular products and services.

25. The use of artificial intelligence extends and enhances the tradition of content curation on the Internet, providing more sophisticated and efficient means of personalizing and curating content for the user at a scale beyond the reach of traditional media. The dominance of particular modes of artificial intelligence-assisted curation raises concern about its impact on the capacity of the individual to form and develop opinions. For example, a handful of technology companies lay claim to the vast majority of search queries conducted online. Corporate monopoly of the search market makes it extremely difficult for users to opt out of the algorithmic ranking and curation of search results and may also induce users to believe (as companies intend it) that the results generated are the most relevant or objective information available on a particular subject. The lack of transparency about how search criteria are developed and implemented through the use of artificial

[21] Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 9, available at www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf; Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (1993).

[22] Nowak, *U.N. Covenant on Civil and Political Rights*.

[23] *Yong Joo-Kang v. Republic of Korea*, Human Rights Committee communication No. 878/1999, 16 July 2003 (CCPR/C/78/D/878/1999).

intelligence may also reinforce the assumption that search results generated on a particular platform are an objective presentation of factual information.

26. The issues that market dominance raises in the field of artificial intelligence-assisted curation therefore test historical understandings of how content curation affects or does not affect the capacity to form an opinion. The novelty of the issues raised, coupled with the general lack of jurisprudence concerning interferences with the right of opinion, provide more questions than answers about the human rights impact of artificial intelligence-assisted curation in the contemporary digital environment. Nevertheless, these questions should drive rights-oriented research into the social, economic and political effects of artificial intelligence-assisted curation. Companies should, at the very least, provide meaningful information about how they develop and implement criteria for curating and personalizing content on their platforms, including policies and processes for detecting social, cultural or political biases in the design and development of relevant artificial intelligence systems.

C. Right to freedom of expression

27. Article 19 (2) of the Covenant guarantees an expansive right to "seek, receive and impart information and ideas of all kinds", one which must be protected and respected regardless of frontiers or type of media. Enjoyment of the right to freedom of expression is intimately related to the exercise of other rights and foundational to the effective functioning of democratic institutions and, accordingly, the protection, respect and promotion of the right to freedom of expression entails the duty to include the promotion of media diversity and independence and the protection of access to information.[24]

28. Unlike the right to form and hold opinions, the rights to express and access information and ideas may be subject to restrictions under limited circumstances (article 19 (3) of the Covenant). Restrictions must meet the standards of legality, meaning that they are publicly provided by a law that meets standards of clarity and precision and are interpreted by independent judicial authorities; necessity and proportionality, meaning that they are the least intrusive measure necessary to achieve the legitimate interest at hand and do not imperil the essence of the right; and legitimacy, meaning that they must be in pursuit of an enumerated legitimate interest, namely, the protection of rights or reputations of others, national security or public order, or public health or morals (A/HRC/38/35, para. 7). Within this framework, expression rights can also be restricted pursuant to article 20 (2) of the Covenant, which requires States to prohibit "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence", but restrictions must still satisfy the cumulative conditions of legality, necessity and legitimacy.[25]

29. The complexity of decision-making inherent in content moderation may be exacerbated by the introduction of automated processes. Unlike humans, algorithms are today not capable of evaluating cultural context, detecting irony or conducting the critical analysis necessary to accurately identify, for example, "extremist" content or

[24] Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Organization for Security and Co-operation in Europe Representative on Freedom of the Media, Organization of American States Special Rapporteur on freedom of expression and African Commission on Human and Peoples' Rights Special Rapporteur on freedom of expression and access to information, "Joint Declaration on freedom of expression and 'fake news'", disinformation and propaganda", 3 March 2017. Available at https://www.osce.org/fom/302796; see also Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression; A/HRC/29/32, para. 61 and A/HRC/32/38, para. 86.

[25] Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 50.

hate speech[26] and are thus more likely to default to content blocking and restriction, undermining the rights of individual users to be heard as well as their right to access information without restriction or censorship.

30. In an artificial intelligence-governed system, the dissemination of information and ideas is governed by opaque forces with priorities that may be at odds with an enabling environment for media diversity and independent voices. Relevantly, the Human Rights Committee has found that States should "take appropriate action ... to prevent undue media dominance or concentration by privately controlled media groups in monopolistic situations that may be harmful to a diversity of sources and views".[27]

31. Users also lack access to the rules of the game when it comes to artificial intelligence-driven platforms and websites. A lack of clarity about the extent and scope of artificial intelligence and algorithmic applications online prevent individuals from understanding when and according to what metric information is disseminated, restricted or targeted. Small concessions to addressing this problem such as selective identification of sponsored search results,[28] or social media platforms highlighting when advertising is paid for by political actors, may contribute slightly to helping users to understand the rules of the information environment, but these neither capture nor resolve the concerns around the scale at which algorithmic processes are shaping that environment.

32. Even when individuals are informed about the existence, scope and operation of artificial intelligence systems, those systems may frustrate efforts at transparency and suitability. To date, no sophisticated and scalable means for scrutinizing and making transparent the technical underpinnings of automated decisions in the online sphere have been developed.[29] This means that individuals will often have their expression rights adversely affected without being able to investigate or understand why, how or on what basis.

D. Right to privacy

33. The right to privacy often acts as a gateway to the enjoyment of freedom of opinion and expression.[30] Article 17 of the Covenant protects the individual against "arbitrary or unlawful interference with his or her privacy, family, home or correspondence" and "unlawful attacks on his or her honour and reputation" and provides that "everyone has the right to the protection of the law against such interference or attacks". The Office of the High Commissioner for Human Rights and the Human Rights Council have emphasized that any interference with privacy must meet standards of legality, necessity and proportionality (A/HRC/27/37, para. 23 and Human Rights Council resolution 34/7, para. 2).

34. Artificial intelligence-driven decision-making systems depend on the collection and exploitation of data, ranging from ambient, non-personal data to personally

[26] Council of Europe, *Algorithms and Human Rights*.

[27] Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 40.

[28] Safiya Umoja Noble, *Algorithms of Oppression: How Search Engines Reinforce Racism* (New York, New York University Press, 2018).

[29] Mike Ananny and Kate Crawford, "Seeing without knowing: limitations of the transparency ideal and its application to algorithmic accountability", *New Media and Society*, vol. 20, No. 3 (13 December 2016). Available at http://journals.sagepub.com/doi/abs/10.1177/1461444816676645?journalCode=nmsa.

[30] See A/HRC/29/32, para. 16, General Assembly resolution 68/167 and Human Rights Council resolution 20/8.

identifiable information, with the vast majority of data used to feed artificial intelligence systems being somewhere in the middle — data that are inferred or extracted from personal data, or personal data that have been anonymized (often imperfectly). Companies use data derived from online profiling and digital fingerprinting, procure datasets from third parties such as data brokers and derive new data from vast aggregated datasets to feed artificial intelligence systems. Artificial intelligence-driven consumer products and autonomous systems are frequently equipped with sensors that generate and collect vast amounts of data on individuals within their proximity[31] and artificial intelligence methods on social media platforms are used to infer and generate sensitive information about people that they have not provided or confirmed, such as sexual orientation, family relationships, religious views, health conditions or political affiliation.

35. Artificial intelligence challenges traditional notions of consent, purpose and use limitation, transparency and accountability — the pillars upon which international data protection standards rest.[32] Because artificial intelligence systems work by exploiting existing datasets and creating new ones, the ability of individuals to know, understand and exercise control over how their data are used is deprived of practical meaning in the context of artificial intelligence. Once data are repurposed in an artificial intelligence system, they lose their original context, increasing the risk that data about individuals will become inaccurate or out of date and depriving individuals of the ability to rectify or delete the data. Artificial intelligence-based systems are being used to make consequential decisions using those data, some of which profoundly affect people's lives,[33] and yet, individuals have few avenues to exercise control over data that have been derived from their personal data, even as anonymization techniques continue to suffer from inadequacies.

E. Obligation of non-discrimination

36. Non-discrimination is an intrinsic principle of human rights law, existing not only as a qualifier on the obligations of States to ensure enjoyment of all other human rights without discrimination, but also, as enshrined in article 26 of the Covenant, as a stand-alone guarantee of equality before the law and equal protection of the law. States are under a clear obligation to "prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". Thus, articles 17 and 19 incorporate individual rights to freedom from discrimination in the holding and forming of opinions, the expression of and access to ideas and information, and the exercise of privacy and the protection of personal data.

37. The potential for artificial intelligence to embed and perpetuate bias and discrimination extends to discrimination in the exercise of freedom of opinion and expression. Moderation algorithms may fail to take into account cultural, language or gender-based contexts and sensitivities, or public interest in the content.[34] Artificial intelligence-driven newsfeeds may perpetuate and reinforce discriminatory attitudes,

[31] Article 19 and Privacy International, "Privacy and freedom of expression".

[32] Human Rights Committee, general comment No. 16: Article 17 (1988) on the right to privacy, para. 10.

[33] Article 19 and Privacy International, "Privacy and freedom of expression".

[34] This has led to, for example, the removal of historical photographs with particular cultural significance. See Julia Carrie Wong, "Mark Zuckerberg accused of abusing power after Facebook deletes 'napalm girl' post", *The Guardian*, 9 September 2016. Available at https://www.theguardian.com/technology/2016/sep/08/facebook-mark-zuckerberg-napalm-girl-photo-vietnam-war; see also A/HRC/38/35, para. 29.

while artificial intelligence profiling and advertising systems have demonstrably facilitated discrimination along racial, religious and gender lines.[35] "Autocomplete" artificial intelligence functions have also produced racially discriminatory results.[36]

38. A number of factors ingrain bias into artificial intelligence systems, increasing their discriminatory potential. These include the way in which artificial intelligence systems are designed, decisions as to the origin and scope of the datasets on which these systems are trained, societal and cultural biases that developers may build into those datasets, the artificial intelligence models themselves and the way in which the outputs of the artificial intelligence model are implemented in practice. For example, facial recognition applications suffer from being grounded in predominantly white, male datasets, with errors occurring in up to 20 per cent of the time for women and people with darker skin colours.[37] When such systems are used to, for example, categorize images available through a search engine, their discriminatory potential can translate into concrete interferences with individuals' exercise of their rights to seek, receive and impart information and freely assemble or associate.

F. Right to an effective remedy

39. Human rights law guarantees individuals a remedy determined by competent judicial, administrative or legislative authorities (article 2 (3) of the Covenant). Remedies must be known by and accessible to anyone who has had their rights violated; must involve prompt, thorough and impartial investigation of alleged violations;[38] and must be capable of ending ongoing violations (A/HRC/27/37, paras. 39–41).

40. Artificial intelligence systems often interfere with the right to a remedy. First, individual notice is almost inherently unavailable. In almost all applications of artificial intelligence technology in the information environment, individuals are not aware of the scope, extent or even existence of the algorithmic decision-making processes that may have an impact on their enjoyment of rights to opinion and expression. The second and more challenging aspect is the scrutability of the artificial intelligence system itself. The logic behind an algorithmic decision may not be evident even to an expert trained in the underlying mechanics of the system. Although it is logical to assume that more transparency around artificial intelligence systems would enable greater scrutiny, algorithmic transparency does not necessarily equate with intelligible explanations of decision-making processes. Algorithms may obscure that a consequential decision has been taken or be so complex and context-dependent as to frustrate explanation. The situation is further complicated because companies

[35] Julia Angwin, Madeleine Varner and Ariana Tobin, "Facebook enabled advertisers to reach 'Jew haters'", ProPublica, 14 September 2017. Available at https://www.propublica.org/article/facebook-enabled-advertisers-to-reach-jew-haters; Ariana Tobin, "Why we had to buy racist, sexist, xenophobic, ableist and otherwise awful Facebook ads," ProPublica, 27 November 2017. Available at https://www.propublica.org/article/why-we-had-to-buy-racist-sexist-xenophobic-ableist-and-otherwise-awful-facebook-ads.

[36] Paris Martineau, "YouTube's search suggests racist autocompletes", The Outline, 13 May 2018. Available at https://theoutline.com/post/4536/youtube-s-search-autofill-suggests-racist-results?zd=1&zi=3ygzt6hw.

[37] Joy Buolamwini, "The dangers of supremely white data and the coded gaze", presented at Wikimania 2018, Cape Town. Available at https://www.youtube.com/watch?v=/SJXKoD6mA8&feature=youtu.be.

[38] Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 15.

operating in the information environment frequently update their algorithms;[39] equally, machine-learning applications may change their own rules and algorithms over time.

41. Compounding these concerns is the shift towards the automation of remedy systems themselves, according to which complaints of individual users, either about content moderation decisions or about the adverse human rights impacts of artificial intelligence technologies, are considered and determined by artificial intelligence technologies.[40] Automatic response processes raise concerns about whether complaint redress mechanisms constitute an effective remedy, given the lack of discretion, contextual analysis and independent determination built into such processes.[41]

G. Legislative, regulatory and policy responses to artificial intelligence

42. Many States are now devising national artificial intelligence strategies in order to explore and develop policies and initiatives designed to maximize the potential benefits of artificial intelligence for their citizens.[42] Although no State has yet to propose a comprehensive law or regulation of artificial intelligence, there are reasons to be cautious about such an approach, which may be ill-suited to such an innovative field and may compensate for lack of detail with overly restrictive or overly permissive provisions. Sectoral regulation may be preferable although, arguably, existing law and regulation, for example in the field of data protection, could be flexible and available without the need to legislate further.

43. At the same time, States should ensure that artificial intelligence is developed in keeping with human rights standards. Any efforts to develop State policy or regulation in the field of artificial intelligence should ensure consideration of human rights concerns.[43] The rights to freedom of opinion and expression, in particular, are often excluded from public and political debates on artificial intelligence, which, to the extent that they tackle human rights issues, tend to focus on bias and discrimination in service delivery.

44. Because the development of effective artificial intelligence systems depends on the acquisition of large datasets as well as long-term investment in technological capabilities, private sector entities are likely to dominate in terms of development, production and capacity, leading to increased public sector reliance on companies for access to artificial intelligence systems. This increases the likelihood and public perception that corporate and government interests will become increasingly intertwined. This is especially the case in the information environment, in which governments are often users — of social media platforms, search engines and other technologies — rather than providers. The alignment of public and private interests does not in itself create human rights interferences but raises concerns about transparency and accountability. As private development of artificial intelligence

[39] Barry Schwartz, "Google: we make thousands of updates to search algorithms each year", Search Engine Roundtable, 5 June 2015. Available at https://www.seroundtable.com/google-updates-thousands-20403.html.

[40] Council of Europe, *Algorithms and Human Rights*.

[41] Pei Zhang, Sophie Stalla-Bourdillon and Lester Gilbert, "A content-linking-context model for 'notice-and-take-down' procedures", *WebSci '16*, May 2016. Available at http://takedownproject.org/wp-content/uploads/2016/04/ContentLinkingModelZhangStallaGilbert.pdf.

[42] Tim Dutton, "An overview of national AI strategies", Medium, 28 June 2018. Available at https://medium.com/politics-ai/an-overview-of-national-ai-strategies-2a70ec6edfd.

[43] It is concerning, for example, that a parliamentary committee in the United Kingdom of Great Britain and Northern Ireland issued a 200-page report that does not mention human rights even once. See United Kingdom of Great Britain and Northern Ireland House of Lords Select Committee on Artificial Intelligence, "AI in the United Kingdom".

proceeds, there is a very real risk that States will delegate increasingly complex and onerous censorship and surveillance mandates to companies.

45. Any State attempts to articulate law or policy in the field of artificial intelligence should speak both to public and private sector artificial intelligence applications, rather than simply focusing on public sector artificial intelligence regulation. As the Council of Europe concluded, "Issues related to algorithmic governance and/or regulation are public policy prerogatives and should not be left to private actors alone."[44] State approaches may involve enhanced transparency and disclosure obligations on companies and robust data protection legislation that addresses artificial intelligence-related concerns.

46. Public and private sector initiatives designed to explore and integrate ethics into the procurement, design, deployment and implementation of artificial intelligence systems are proliferating. I strongly encourage the integration of human rights concerns into these efforts. The private sector's focus on and the public sector's push for ethics often imply resistance to human rights-based regulation.[45] While ethics provide a critical framework for working through particular challenges in the field of artificial intelligence, it is not a replacement for human rights, to which every State is bound by law. Companies and governments should ensure that human rights considerations and responsibilities are firmly integrated into all aspects of their artificial intelligence operations even as they are developing ethical codes and guidance.[46]

IV. A human rights-based approach to artificial intelligence

47. In recent reports, the mandate holder has set out legal and practical considerations for companies, to put human rights principles at the heart of their content regulation policies, and has detailed both substantive standards and processes that ensure that companies can comply with their human rights responsibilities under the Guiding Principles on Business and Human Rights in all aspects of their operations. That same framework frames the approach offered here with respect to artificial intelligence technologies. The substantive standards and processes proposed below apply to companies, in their capacity as actors that design, deploy and implement artificial intelligence systems, and to States, which have an obligation to refrain from interfering with human rights in their own adoption and use of artificial intelligence systems. These standards and processes are designed to ensure that human rights law is placed at the heart of advancements in the field of artificial intelligence. Two fundamental principles are woven throughout the standards and processes offered: the need to protect and respect individual agency and autonomy, a key precondition to the exercise of the right to freedom of opinion and expression; and the importance of meaningful disclosure on the part of public and sector actors, defined by open and innovative efforts to explain artificial intelligence technologies to the public and facilitate their scrutiny.

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[44] Council of Europe, *Algorithms and Human Rights*.

[45] Ben Wagner, "Ethics as an escape from regulation: from ethics-washing to ethics-shopping?", in *Being Profiling: Cogitas Ergo Sum*, Mireille Hildebrandt, ed. (Amsterdam University Press (forthcoming)).

[46] Article 19 and Privacy International, "Privacy and freedom of expression".

A. Substantive standards for artificial intelligence systems

48. Companies should orient their standards, rules and system design around universal human rights principles (A/HRC/38/35, paras. 41–43). Public-facing terms and guidelines should be complemented by internal policy commitments to mainstreaming human rights considerations throughout a company's operations, especially in relation to the development and deployment of artificial intelligence and algorithmic systems. Companies should consider how to elaborate professional standards for artificial intelligence engineers, translating human rights responsibilities into guidance for technical design and operation choices. The development of codes of ethics and accompanying institutional structures may be an important complement to, but not a substitute for, commitments to human rights. Codes and guidelines issued by both public and private sector bodies should emphasize that human rights law provides the fundamental rules for the protection of individuals in the context of artificial intelligence, while ethics frameworks may assist in further developing the content and application of human rights in specific circumstances.

49. Companies and governments must be explicit with individuals about which decisions in the information environment are made by automated systems and which are accompanied by human review, as well as the broad elements of the logic used by those systems. Individuals should also be informed when the personal data they provide to a private sector actor (either explicitly or through their use of a service or site) will become part of a dataset used by an artificial intelligence system, to enable them to factor that knowledge into their decision about whether to consent to data collection and which types of data they wish to disclose.[47] Similarly to the public notices required for the use of closed-circuit television cameras, artificial intelligence systems should actively disclose to individuals (through innovative means such as pop-up boxes) in a clear and understandable manner that they are subject or contributing data to an artificial intelligence-driven decision-making process, as well as meaningful information about the logic involved in the process and the significance of the consequences to the individual.

50. Transparency does not stop with the disclosure to individual users about the existence of artificial intelligence technologies in the platforms and online services they use. Companies and governments need to embrace transparency throughout each aspect of the artificial intelligence value chain. Transparency need not be complex to be effective; even simplified explanations of the purpose, policies, inputs and outputs of an artificial intelligence system can contribute to public education and debate.[48] Rather than grapple with the predicament of making convoluted technical processes legible to lay audiences, companies should strive to achieve transparency through the provision of non-technical insights into a system. To that end, the focus should be on educating individual users about an artificial intelligence system's existence, purpose, constitution and impact, rather than about the source code, training data and inputs and outputs.[49]

51. Radical transparency about the impact of an artificial intelligence system in the information environment requires disclosure of, for example, data on how much content is removed by artificial intelligence systems, how often artificial intelligence-suggested content removals are approved by a human moderator, how often content removals are contested and how often challenges to content removals are upheld.

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[47] Human Rights Committee, general comment No. 16 (1988) on the right to privacy.

[48] Aaron Rieke, Miranda Bogen and David Robinson, "Public scrutiny of automated decisions: early lessons and emerging methods" (Omidyar and Upturn, 2018).

[49] Rieke, Bogen and Robinson, "Public scrutiny of automated decisions".

Aggregate data illustrating trends in content display should be available for users to inspect, alongside case studies that illustrate why certain content will be prioritized over other content. Disclosure about the sources and beneficiaries of political and commercial advertising is a critical element of radical transparency. Public and private sector actors implementing artificial intelligence-driven systems should also be transparent about the limits of the artificial intelligence system, including for example, confidence measures, known failure scenarios and appropriate limitations on use.[50]

52. Tackling the prevalence of discrimination in artificial intelligence systems is an existential challenge for companies and governments; failure to address and resolve the discriminatory elements and impacts will render the technology not only ineffective but dangerous. There is ample thought leadership and resources for companies and governments to draw on in considering how to address bias and discrimination in artificial intelligence systems; broadly speaking, it necessitates isolating and accounting for discrimination at both the input and output levels. This involves, at a minimum, addressing sampling errors (where datasets are non-representative of society), scrubbing datasets to remove discriminatory data and putting in place measures to compensate for data that "contain the imprint of historical and structural patterns of discrimination"[51] and from which artificial intelligence systems are likely to develop discriminatory proxies. Active monitoring of discriminatory outcomes of artificial intelligence systems is also integral to avoiding and mitigating adverse effects on the human rights of individuals.

B. Processes for artificial intelligence systems

53. **Human rights impact assessments**. Embracing radical transparency throughout the artificial intelligence life cycle requires companies and governments to take steps to permit systems to be scrutinized and challenged from conception to implementation. Human rights impact assessments are one tool that can demonstrate a commitment to addressing the human rights implications of artificial intelligence systems and should be performed prior to procurement, development or use and involve both self-assessment and external review. The think tank AI Now has proposed a public agency algorithmic impact assessment that stipulates that governments should undertake an internal review of artificial intelligence systems as well as facilitate external research review processes to test and verify assumptions and conclusions.[52] Companies should also conduct assessments along similar lines.

54. Public sector procurement of artificial intelligence technologies from private vendors must be accompanied by a public consultation to elicit societal views and input on the design and implementation of the artificial intelligence system before it is acquired. Both companies and governments must conduct meaningful and sustained consultations with civil society, human rights groups, relevant local communities and representatives of historically marginalized or underrepresented populations before developing, procuring or using artificial intelligence systems and technologies.

[50] Amnesty International and Access Now, "Toronto declaration: protecting the right to equality and non-discrimination in machine learning systems", art. 27 (d), 2018. Available at https://www.accessnow.org/the-toronto-declaration-protecting-the-rights-to-equality-and-non-discrimination-in-machine-learning-systems/.

[51] Iason Gabriel, "The case for fairer algorithms", Medium, 14 March 2018. Available at https://medium.com/@ethics_Society/the-case-for-fairer-algorithms-c008a1212618.

[52] Dillon Reisman and others, "Algorithmic impact assessments: a practical framework for public agency accountability" (AI Now, 2018). Available at https://ainowinstitute.org/aiareport2018.pdf.

55. **Audits**. Facilitating external review of artificial intelligence systems provides a critical guarantee of rigour and independence in transparency. For this reason, ongoing independent audits should supplement pre-procurement human rights impact assessments as an important mechanism of transparency and accountability in artificial intelligence systems. Private sector actors have raised objections to the feasibility of audits in the artificial intelligence space, given the imperative to protect proprietary technology. While these concerns may be well founded, I agree with AI Now that, especially when an artificial intelligence application is being used by a public sector agency, refusal on the part of the vendor to be transparent about the operation of the system would be incompatible with the public body's own accountability obligations.

56. In any event, innovative suggestions for audits of artificial intelligence technology that permit proprietary secrecy abound: zero-knowledge proofs could conceivably be generated by algorithms to demonstrate that they conform to certain properties, obviating the need to scrutinize the underlying algorithm,[53] or algorithms could be disclosed to expert third parties who would hold them in escrow on the condition of confidentiality, permitting public interest scrutiny but not allowing the algorithm to become public.[54] Government regulators from the domains of telecommunications or competition could be permitted access to artificial intelligence systems on a confidential basis, as already occurs, for example, in the regulation of gambling machines in Australia and New Zealand, in which companies must submit their algorithmic systems to regulatory audit review.[55] Academic literature contains other suggestions for innovative forms of artificial intelligence audits.[56]

57. Each of these mechanisms may face challenges in implementation, especially in the information environment, but companies should work towards making audits of artificial intelligence systems feasible. Governments should contribute to the effectiveness of audits by considering policy or legislative interventions that require companies to make artificial intelligence code auditable, guaranteeing the existence of audit trails and thus greater opportunities for transparency to individuals affected.

58. **Individual autonomy**. Artificial intelligence must not invisibly supplant, manipulate or interfere with the ability of individuals to form and hold their opinions or access and express ideas in the information environment. Respecting individual autonomy means, at the very least, ensuring that users have knowledge, choice and control. Pervasive and hidden artificial intelligence applications that obscure the processes of content display, personalization, moderation and profiling and targeting undermine the ability of individuals to exercise the rights to freedom of opinion, expression and privacy. Companies should be mindful of the adverse human rights impacts that flow from artificial intelligence applications that prioritize commercial or political interests over transparency and individual choice.

59. **Notice and consent**. Companies must ensure that users are fully informed about how algorithmic decision-making shapes their use of a platform, site or service. This can be achieved through education campaigns, pop-up boxes, interstitials and other means of signalling when an artificial intelligence system is determining a user's experience of a search engine, news site or social media platform. State-imposed disclosure requirements may be an appropriate means of protecting notice and

[53] Council of Europe, *Algorithms and Human Rights*.

[54] Frank Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information* (Cambridge, Harvard University Press, 2015).

[55] Council of Europe, *Algorithms and Human Rights*.

[56] Christian Sandvig and others, "Auditing algorithms: research methods for detecting discrimination on Internet platforms", paper presented at Data and Discrimination: Converting Critical Concerns into Productive Inquiry, a pre-conference at the 64th annual meeting of the International Communication Association, Seattle, 22 May 2014.

consent. Individuals also have a right to know when their data are being collected by an artificial intelligence application and whether the data will become part of a dataset that will subsequently inform an artificial intelligence application, as well as the conditions on which that data will be used, stored and deleted.

60. **Remedy**. Adverse impacts of artificial intelligence systems on human rights must be remediable and remedied by the companies responsible. The precondition to the establishment of effective remedy processes is ensuring that individuals know that they have been subject to an algorithmic decision (including one that is suggested by an artificial intelligence system and approved by a human interlocutor) and are equipped with information about the logic behind that decision. Beyond that, companies should ensure human review of requests for remedy, in order to provide an appropriate check on the systems and guarantee accountability. Data should be published on the frequency at which remedial mechanisms are triggered for decisions made by artificial intelligence technologies.

V. Conclusions and recommendations

61. In the present report, I have explored existing and potential impacts of artificial intelligence on the rights to freedom of opinion and expression, positing that artificial intelligence is now a critical part of the information environment, posing benefits and risks to individuals' enjoyment of their rights. I have proposed a conceptual framing for thinking about the obligations of States and responsibilities of companies to uphold these rights in the face of expanding technological capabilities and have suggested concrete measures that could be implemented by both governments and companies to ensure that human rights are respected as the power, reach and scope of artificial intelligence technology grows.

Recommendations for States

62. When procuring or deploying artificial intelligence systems or applications, States should ensure that public sector bodies act consistently with human rights principles. This includes, inter alia, conducting public consultations and undertaking human rights impact assessments or public agency algorithmic impact assessments prior to the procurement or deployment of artificial intelligence systems. Particular attention should be given to the disparate impact of such technologies on racial and religious minorities, political opposition and activists. Government deployment of artificial intelligence systems should be subject to regular audits by external, independent experts.

63. States should ensure that human rights are central to private sector design, deployment and implementation of artificial intelligence systems. This includes updating and applying existing regulation, particularly data protection regulation, to the artificial intelligence domain, pursuing regulatory or co-regulatory schemes designed to require businesses to undertake impact assessments and audits of artificial intelligence technologies and ensuring effective external accountability mechanisms.[57] Where applicable, sectoral regulation of particular artificial intelligence applications may be necessary and effective for the protection of human rights. To the extent that such restrictions introduce or facilitate interferences with freedom of expression, States should ensure that they are necessary and proportionate to accomplish a legitimate

[57] Wagner, "Ethics as an escape from regulation".

objective in accordance with article 19 (3) of the Covenant. Artificial intelligence-related regulation should also be developed through extensive public consultation involving engagement with civil society, human rights groups and representatives of marginalized or underrepresented end users.

64. **States should create a policy and legislative environment conducive to a diverse, pluralistic information environment. This includes taking measures to ensure a competitive field in the artificial intelligence domain. Such measures may include the regulation of technology monopolies to prevent the concentration of artificial intelligence expertise and power in the hands of a few dominant companies, regulation designed to increase interoperability of services and technologies, and the adoption of policies supporting network neutrality and device neutrality.**[58]

Recommendations for companies

65. **All efforts to formulate guidelines or codes on ethical implications of artificial intelligence technologies should be grounded in human rights principles. All private and public development and deployment of artificial intelligence should provide opportunities for civil society to comment. Companies should reiterate in corporate policies and technical guidance to engineers, developers, data technicians, data scrubbers, programmers and others involved in the artificial intelligence life cycle that human rights responsibilities guide all of their business operations and that ethical principles can assist by facilitating the application of human rights principles to specific situations of artificial intelligence design, deployment and implementation. In particular, the terms of service of platforms should be based on universal human rights principles.**

66. **Companies should make explicit where and how artificial intelligence technologies and automated techniques are used on their platforms, services and applications. The use of innovative means to signal to individuals when they are subject to an artificial intelligence-driven decision-making process, when artificial intelligence plays a role in displaying or moderating content or when individuals' personal data may be integrated into a dataset that will be used to inform artificial intelligence systems is critical to giving users the notice necessary to understand and address the impact of artificial intelligence systems on their enjoyment of human rights. Companies should also publish data on content removals, including how often removals are contested and challenges to removals are upheld, as well as data on trends in content display, alongside case studies and education on commercial and political profiling.**

67. **Companies must prevent and account for discrimination at both the input and output levels of artificial intelligence systems. This involves ensuring that teams designing and deploying artificial intelligence systems reflect diverse and non-discriminatory attitudes and prioritizing the avoidance of bias and discrimination in the choice of datasets and design of the system, including by addressing sampling errors, scrubbing datasets to remove discriminatory data and putting in place measures to compensate for such data. Active monitoring of discriminatory outcomes of artificial intelligence systems is also essential.**

[58] Autorité de régulation des communications électroniques et des postes, *Devices, the Weak Link in Achieving an Open Internet* (2018). Available at https://www.arcep.fr/uploads/tx_gspublication/rapport-terminaux-fev2018-ENG.pdf.

68. **Human rights impact assessments and public consultations should be carried out during the design and deployment of new artificial intelligence systems, including the deployment of existing systems in new global markets. Public consultations and engagement should occur prior to the finalization or roll-out of a product or service, in order to ensure that they are meaningful, and should encompass engagement with civil society, human rights defenders and representatives of marginalized or underrepresented end users. The results of human rights impact assessments and public consultations should themselves be made public.**

69. **Companies should make all artificial intelligence code fully auditable and should pursue innovative means for enabling external and independent auditing of artificial intelligence systems, separately from regulatory requirements. The results of artificial intelligence audits should themselves be made public.**

70. **Individual users must have access to remedies for the adverse human rights impacts of artificial intelligence systems. Companies should put in place systems of human review and remedy to respond to the complaints of all users and appeals levied at artificial intelligence-driven systems in a timely manner. Data on the frequency at which artificial intelligence systems are subject to complaints and requests for remedies, as well as the types and effectiveness of remedies available, should be published regularly.**

United Nations A/73/349

General Assembly

Distr.: General
29 August 2018

Original: English

Seventy-third session
Item 54 of the provisional agenda*
United Nations Relief and Works Agency for Palestine Refugees in the Near East

Report of the Working Group on the Financing of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

Rapporteur: Kjetil J. **Halvorsen** (Norway)

Summary

The present report of the Working Group on the Financing of the United Nations Relief and Works Agency for Palestine Refugees in the Near East provides a description of the activities of the Group in 2018 and a detailed outline of the current financial situation of the Agency. The Working Group adopted the report at its meeting on 22 August 2018.[a] As in previous reports of the Group, the present report closes with concluding remarks addressed to all Member States.

[a] The United States of America has dissociated itself from the present report.

* A/73/150.

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I. Introduction

1. The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was established under General Assembly resolution 302 (IV), and its mandate was most recently renewed by the Assembly in its resolution 71/91.

2. The Working Group on the Financing of the United Nations Relief and Works Agency for Palestine Refugees in the Near East was established by the General Assembly under resolution 2656 (XXV) to study all aspects of the financing of the Agency.

3. The Working Group consists of the representatives of France, Ghana, Japan, Lebanon, Norway, Trinidad and Tobago, Turkey, the United Kingdom of Great Britain and Northern Ireland and the United States of America. It is currently chaired by the Permanent Representative of Turkey, Feridun H. Sinirlioğlu.

4. At its twenty-fifth session and all sessions that have followed, the General Assembly has considered the reports submitted to it by the Working Group (in 2017, A/72/326) and adopted resolutions relating to UNRWA and the Working Group, taking note with appreciation of the efforts of the Working Group (the most recent being resolution 72/82).

II. Activities of the Working Group

5. The Working Group began to prepare the present report at its first regular session, on 12 June 2018, which was chaired by the Deputy Permanent Representative of Turkey. The Working Group then met at the expert level at its second, third, fourth, fifth and sixth sessions, on 20, 25 and 31 July and on 9 and 16 August, and adopted the present report on 22 August, in the presence of the Deputy Permanent Representative of Turkey, the Director of the UNRWA Representative Office in New York and the Officer-in-Charge of the Middle East and West Asia Division in the Department of Political Affairs.

III. Financial situation of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

6. The Agency was entrusted by the international community with the responsibility to meet the essential needs of Palestine refugees. Throughout its history, and in the context of the unresolved plight of Palestine refugees, UNRWA has been confronted with persistent shortfalls in funding. Those shortfalls have challenged the Agency's ability to fully implement its mandate to provide assistance and protection to Palestine refugees, who now number more than 5.3 million and account for approximately 25 per cent of refugees worldwide. By 2020, the Palestine refugee population is forecast to reach 6.4 million people. The Agency is a major contributor to the human development of Palestine refugees and a versatile front-line responder in humanitarian emergencies.

7. The Agency is currently facing an unprecedented funding crisis for 2018. It began the year projecting a shortfall of some $146 million on its programme budget. In January, the United States announced a contribution to UNRWA of $60 million, representing a $300 million reduction in its funding from the previous year. As a result, the Agency's projected operational shortfall grew to $446 million, placing at immediate risk the delivery of essential services that the Agency is mandated to provide for millions of Palestine refugees in the Gaza Strip and the West Bank, including East Jerusalem, Jordan, Lebanon and the Syrian Arab Republic.

8. The services at imminent risk include: (a) maintaining the provision of education for 526,000 refugee students in over 700 schools; (b) operating over 140 primary health centres that provide over 37,000 medical consultations every day; (c) providing solid waste removal from 58 refugee camps; (d) carrying out poverty-mitigation and livelihood interventions, including support for 250,000 food-insecure refugees; (e) continuing to run the Agency's technical and vocational training and post-secondary education institutions, in which 9,000 youth are enrolled; and (f) delivering urgent humanitarian assistance, including food aid to some 1.5 million conflict-affected refugees in the Gaza Strip, the West Bank and the Syrian Arab Republic.

9. Steps were taken immediately to manage the crisis, including through an extraordinary meeting of the Advisory Commission of UNRWA on 21 January. To address urgent cash flow needs and ensure continued service delivery, the Agency reached out to its donors requesting advance payment of regular annual contributions; 25 donors transferred their contributions, enabling the temporary continuation of services for Palestine refugees, including schools, clinics and a social safety net for highly vulnerable refugees.

10. In addition to its extraordinary engagement with donors, UNRWA also responded rapidly to the financial crisis with a global fundraising campaign launched in Gaza on 22 January. The campaign, "Dignity is priceless", sought to tap into individual giving and private sector philanthropy, support from civil society and communities of faith, and financing from humanitarian and development foundations.

11. While donor support has remained paramount to closing the Agency's income gap, internal actions were taken to reduce it. Management stripped $92 million from core and emergency budgets for 2018, a step it described as difficult but necessary. It also froze spending in a range of categories, other than for life-critical functions; suspended hiring Agency-wide, with the exception of posts essential for service delivery; and slashed travel and training budgets. Rigid budgetary controls and robust oversight by an executive budget committee enabled real-time tracking of the Agency's finances and rapid adjustments as needed.

12. By March a rupture in core and emergency operations was again imminent. A turning point in the global response was the ministerial conference held in Rome on 15 March, Preserving Dignity and Sharing Responsibility — Mobilizing Collective Action for UNRWA. Some $100 million was pledged, almost all of it additional money, including from the Central Emergency Response Fund, which announced an immediate cash transfer of $15 million that encouraged other partners to commit further support to UNRWA. An additional $15 million was approved by the secretariat of the Fund in April. Half of the amount raised at the conference in Rome was pledged by Qatar, representing an exponential increase over its previous annual contributions to UNRWA. In addition, Canada, France, India, Norway, Switzerland and Turkey pledged significant increases, alongside other donors. Following the conference in Rome, a further $100 million was raised, with Saudi Arabia and the United Arab Emirates each pledging $50 million for the UNRWA core budget — a major increase over previous years and a substantial diversification of their financial assistance, which had focused on emergency response and infrastructure projects. Japan also pledged significant additional resources. The Secretary-General has played an important role in mobilizing stakeholders to address the Agency's financial shortfall.

13. By August, eight months after UNRWA declared a severe financial crisis, some $238 million in additional resources had been mobilized, reflecting the strong collective response of the Agency's partners, which enabled UNRWA to keep its education and health systems running without breaks in service for the first half of 2018 and to continue the provision of relief and social services to the most vulnerable

refugees in and around 58 refugee camps in the region. Some activities, however, have been affected, including solid waste removal in refugee camps.

14. While collective stakeholder efforts were focused on the Agency's crisis in 2018, UNRWA also moved forward with the recommendations made by the Secretary-General in his report of 30 March 2017 (A/71/849), in which he encouraged pursuing a number of other avenues to secure predictable, sustained and sufficient funding for UNRWA over the long term. In the report, "the indispensable role that UNRWA plays and its essential function on account of its impact in the context of the unresolved Arab-Israeli conflict" as well as the Agency's role in the "mitigation of extremism, its stabilizing influence and its contribution to peace and security in the Middle East region" were underlined. The Secretary-General made clear in his report that a solution to continued financial insecurity would require progress in a combination of areas. In parallel, the Secretary-General asked the Commissioner-General to continue to prudently manage the resources made available to the Agency for the benefit of the Palestine refugees. In June 2018, UNRWA reported that progress had been made in engaging financial institutions and multilateral funds and developing concrete initiatives that were aimed at strengthening the Agency's financial footing in the longer term. UNRWA continues to work closely with the World Bank Group and key donors on developing a sustainable partnership through a multi-donor trust fund, which would facilitate access to funds that are not contributed directly to UNRWA. Following close engagement since 2017 between UNRWA and the Organization of Islamic Cooperation, as well as with the Islamic Development Bank, at the Islamic Summit Conference, held in Istanbul, Turkey, in May, Heads of State and Government announced their decision to establish a waqf to support Palestine refugees through UNRWA.

15. On 25 June, the annual pledging conference was held in New York. It was a very positive event that sustained the momentum in addressing the remaining shortfall of approximately $246 million, which could have a critical effect on the vital UNRWA services to Palestine refugees. Member States expressed strong political support for UNRWA, its mandate, its staff and its critical services to Palestine refugees. The Conference saw additional pledges to UNRWA as part of an international effort to address the Agency's funding shortfall and to sustain its vital services. By August the shortfall stood at $217 million and the lack of adequate funding had forced UNRWA to begin reducing services.

16. Amid serious financial challenges, the Agency continues to implement its medium-term strategy for the period 2016–2021 in consultation with host States and key donors. The strategy fosters greater cost efficiency, while delivering high-quality core services to Palestine refugees.

17. The Agency's reforms, including those rolled out in the context of the current medium-term strategy, underscore the commitment of its leadership to transparency and accountability, in line with the principles of the Grand Bargain on humanitarian financing announced at the World Humanitarian Summit, held in Istanbul in May 2016. At the meeting of the Advisory Commission on 18 and 19 June 2018, the Commissioner-General reported that reforms and related measures since 2015 had resulted in savings of $197 million, at a time when needs had been significant and growing. UNRWA has significantly tightened financial controls and budgetary oversight, and the Agency reports an improvement in cost containment and in minimizing budget growth despite inflationary pressures and the drastic increase in demand.

18. Recurrent funding shortfalls are a serious concern to the Agency's donors and hosts, with stakeholders expressing concern that they may fuel regional instability and undermine the trust of Palestine refugees in the Agency. Its financial fragility is

exacerbating concerns among refugees about the ability of the international community to address their most basic needs. Their hopes for peace, safety and a meaningful future have been jeopardized by conflicts and grinding poverty.

19. Recurring shortfalls and financial instability underscore the necessity of continuing the Agency's programme and management reforms, broadening the donor base and increasing support from Member States to place UNRWA on a stable financial footing. The Working Group notes with concern that, as at August 2018, the Agency's financial shortfall on its programme budget stood at $123 million, representing more than 16.5 per cent of its cash budget for 2018 of $747 million, or equivalent to approximately two months of operational costs.

20. Contributions to the Agency's emergency appeals are low, in particular with respect to the emergency appeal for the Occupied Palestinian Territory in 2018, which was funded at 22 per cent as at August 2018. Financial support for the Agency's major reconstruction projects in Nahr el-Bared and in the Gaza Strip has been slow to arrive.

21. The Agency's work on behalf of Palestine refugees also contributes directly to the broader global effort to achieve the Sustainable Development Goals by 2030. With over half a million students enrolled, full gender balance in the Agency's 711 schools and one of the highest literacy rates in the Middle East, it is essential that Palestine refugee schoolchildren have continuous, uninterrupted access to an inclusive and equitable quality education, in accordance with Goal 4.

22. Since it began its operations in 1950, UNRWA has been serving Palestine refugees in Gaza and the West Bank, Jordan, Lebanon and the Syrian Arab Republic, with the steady facilitation and generous support of host Governments and donors. Currently, its more than 30,000 staff members provide vital human development services and emergency assistance to Palestine refugees registered with the Agency. Palestine refugees have remained among the most vulnerable in their communities and their situation has been worsened as a result of repeated conflicts in the region, most recently in the Syrian Arab Republic since 2011 and in Gaza in 2008–2009, 2012, 2014 and 2018.

23. Since the beginning of the conflict in the Syrian Arab Republic, 18 UNRWA staff have been killed as a result of hostilities or in circumstances related to the conflict. A further 26 personnel have been detained, are presumed detained or have gone missing. Those tragic losses are included with the large number of Palestine refugees killed or wounded during the repeated conflicts in the region. Threats and attacks against UNRWA personnel remain a major concern.

24. The Working Group acknowledges that, in a turbulent region such as the Middle East and in the context of the recent mass movements of refugees within and outside the region, UNRWA continues to play a key stabilizing role for the Palestine refugee community and the region. Access to its services, including educational services, influences the decisions of Palestine refugees to remain in situ instead of risking their lives attempting to reach Europe and elsewhere. It is important to note that the cost of supporting a Palestine refugee through UNRWA is significantly lower than the cost of supporting a refugee in Europe.

25. In Gaza, the living conditions of some 1.3 million registered Palestine refugees have deteriorated owing to the impact of repeated conflicts and the downward economic spiral experienced since 2000. The closure of Gaza, now entering its twelfth year, has had a ruinous effect on the economy. Unemployment rates are as high as 60 per cent for young people, contributing to the extreme dependence of an estimated 80 per cent of the population on international assistance. Subject to the availability of funds, UNRWA is expected to continue to provide food assistance to 1 million Palestine refugees in 2018, more than half of the total population of Gaza. The water

and energy crisis in Gaza is becoming increasingly acute. Recurrent conflict and chronic underinvestment in infrastructure mean that 95 per cent of the groundwater in Gaza is contaminated, while approvals for the entry of materials required to construct and sustain the operation of essential water, sanitation and hygiene services are increasingly hard to obtain. Gaza experiences power outages of 18 to 20 hours a day, which severely affect basic services; and most of the population has access to piped water for only 3 to 5 hours every five days. Closures and access restrictions continue to seriously limit the movement of people, goods and services into Gaza. Israeli closures also increase the financial costs of UNRWA providing effective humanitarian aid to refugees. The Working Group is concerned about the Agency's extra staffing, transit and logistical costs resulting from the Israeli closures and security procedures relating to the access and monitoring of all Agency imports into Gaza. The Working Group stresses that progress is needed to address the overall economic and humanitarian situation in Gaza and underscores the importance of the full implementation of Security Council resolutions 1850 (2008) and 1860 (2009).

26. The Israeli occupation continues to constrain life for the Palestine refugee community, currently numbering some 800,000 persons registered with the Agency's field of operations in the West Bank. Since October 2015, a considerable increase in violence has been witnessed in the West Bank, including clashes around refugee camps and killings of Palestine refugees, Israeli civilians and Israeli security forces. Demolitions, the displacement of families and settler violence, especially in Area C, have severely affected Palestine refugees. In 2017, 406 demolitions of Palestinian-owned structures without building permits were carried out by the Israeli authorities, displacing 615 people, including 262 Palestine refugees. From the beginning of 2018 to 19 June 2018, the Israeli authorities demolished 165 Palestinian structures for lack of Israeli building permits. This has displaced at least 128 Palestinian men, women and children, including Bedouins. Settlement expansion plans, including for areas of East Jerusalem, have caused great concern for the Palestine refugee community. Israel continued to advance plans for the transfer of some 50 Bedouin communities, populated by a Palestine refugee majority. Movement restrictions imposed by the Government of Israel have had a debilitating effect on the economy of the West Bank. In 2018, the total amount of value added tax due to the Agency from the Palestinian Authority Ministry of Finance with respect to services and goods procured for the West Bank and Gaza stood at $100.9 million (unaudited as at 31 August 2018), slightly higher than the previous year's amount of $100.7 million.

27. In the Syrian Arab Republic, the conflict continues to take an extraordinary toll on Palestine refugees, with up to 58 per cent of the estimated 438,000 remaining in that country having been displaced at least once, as at January 2018. While several efforts were supported by the international community to end the violence, notably through United Nations-led peace negotiations in early 2017, they have not yet proved successful. As in previous years, the conflict has been characterized by violations of international humanitarian law and the use of indiscriminate violence. As at January 2018, approximately 49,512 Palestine refugees from the Syrian Arab Republic had fled to Lebanon and Jordan, while others had sought to flee to Europe, often with disastrous consequences. Overall, 95 per cent of Palestine refugees in the Syrian Arab Republic are reliant on UNRWA for assistance. Access to the approximately 49,700 Palestine refugees located in hard-to-reach and besieged areas, including Yalda, Muzayrib and Jallayn, remains a very significant challenge.

28. *The wider destabilization of the region, resulting from the conflict in the* Syrian Arab Republic, continues to pose major socioeconomic and security concerns for Jordan and Lebanon, which host large numbers of refugees from the Syrian Arab Republic, in addition to existing resident populations of Palestine refugees.

29. In Lebanon, where, according to UNRWA data, more than 465,000 Palestine refugees are currently registered (excluding those who arrive from the Syrian Arab Republic), living conditions have been exceptionally difficult since 1948. The refugees continue to be barred from participating in 39 professions and face a number of other restrictions, such as a prohibition on owning fixed property. Access to government services is restricted. The influx of Palestine refugees from the Syrian Arab Republic has aggravated the dependency situation of the community already suffering from widespread poverty. In this context, the Agency's services are seen as a lifeline for the refugees. Lebanon is hosting multiple large refugee populations, causing enormous strains on government resources, infrastructure and social cohesion.

30. In Jordan, which is host to more than 2.3 million Palestine refugees, living standards are relatively favourable, despite the fact that many continue to face hardship and increasing poverty. The rising number of refugees from the Syrian Arab Republic, including some Palestine refugees from that country, creates difficulties for both the host Government and those seeking assistance. Jordan is hosting multiple large refugee populations, which is causing enormous strains on government resources, infrastructure and social cohesion.

31. Member States contribute to UNRWA through three separate portals, namely the programme budget, emergency appeals and the project budget.

32. The core operations of UNRWA are encapsulated in its programme budget, which finances its mandated programme of work, principally in the areas of education, health care and relief and social services. The programme budget is the foundation for all activities and programmes.

33. Emergency appeals are special calls on the international community to finance humanitarian needs that have arisen owing to conflicts or situations that have generated sharp declines in the living conditions of Palestine refugees. In early 2018, UNRWA issued two emergency appeals, for the Occupied Palestinian Territory and the Syrian Arab Republic. The latter includes emergency activities in Jordan and Lebanon for those who have fled the conflict in the Syrian Arab Republic.

34. The Agency's project budget includes all other time-bound activities in support of Palestine refugees. Examples include the purchase of medical equipment, the institutional strengthening of UNRWA and the reconstruction of school buildings. One of the priority projects of UNRWA and the Government of Lebanon is the reconstruction of the Nahr el-Bared camp in Lebanon, which was destroyed in 2007, for which UNRWA still requires $90 million as at August 2018. Another priority for UNRWA is the Gaza Reconstruction Plan of 2014, estimated at a cost of $720 million, for which $316 million has been pledged thus far.

35. With the exception of 155 international staff positions funded through the regular budget of the United Nations and 3 positions financed by partner United Nations entities, the Agency's programme budget is financed entirely by voluntary donor contributions. UNRWA projects that the demand for services will continue to grow throughout the medium term, in tandem with a growing Palestine refugee population whose needs are increasing as a result of conflict, social and economic crises and high rates of unemployment and poverty.

36. Further compounding the problem is a lack of working capital. While UNRWA had an average cash balance of about $80 million in 2010, it has had virtually no working capital since 2012. UNRWA has also temporarily suspended creditor payments at various times as a result of a shortage of cash, thereby reducing supplier confidence and exposing the Agency to increased legal and financial risks.

37. At the end of December 2017, the Agency's programme budget cash balance was $10.1 million, with a monthly cash outflow of $56.6 million, comprising $42.4 million in staff costs and $14.2 million in non-staff costs. The table below shows the evolution of the Agency's working capital.

Evolution of working capital between 2010 and 2017

(Millions of United States dollars)

Year	*Total cash inflow*	*Staff costs*	*Non-staff costs*	*Total outflow*	*Cash balance, including advance*	*Advance*
2010	571.5	410.5	99.1	509.6	79.5	28.0
2011	535.5	454.9	119.8	574.7	32.9	17.0
2012	581.4	478.6	124.1	602.7	6.4	16.0
2013	631.2	496.5	118.8	615.3	1.9	6.5
2014	659.7	519.0	138.2	657.2	2.5	8.0
2015	669.0	506.8	160.3	667.1	1.8	41.4
2016	660.0	488.4	164.6	653.0	7.0	3.6
2017	655.8	508.7	170.7	679.4	10.1	6.7

38. Locally recruited staff receive salaries that are considerably lower than those of national staff employed by other United Nations entities because, consistent with the Agency's pay policy, locally recruited fixed-term staff are paid against host government wages in equivalent functions. The Agency's allowances are also lower than those in other United Nations entities.

39. The Agency expressed its concern to the Working Group regarding unfunded severance payments to staff, which had been audited in the amount of $768.6 million as at 31 December 2017 (an increase of $65.4 million compared with $693.7 million for the previous year), given current costs and UNRWA staff regulations and rules.

40. The primary responsibility to protect human rights lies with States. UNRWA works to safeguard and advance the rights of Palestine refugees under international law. The Agency contributes to the promotion of the human rights of Palestine refugees, both internally, by respecting human rights in its service delivery, and externally, by promoting greater respect for international law, including international human rights law. In accordance with its mandate from the General Assembly, the Agency places a particular emphasis on women, children and persons with disabilities, as well other vulnerable groups. In 2017, the Agency identified 5,084 individuals experiencing a general protection risk, 4,958 survivors of gender-based violence and 2,540 children experiencing a protection risk. UNRWA provided direct and indirect services to respond to these identified protection cases and took steps to provide further protection within its core programmes, as well as advocating greater respect for the rights of Palestine refugees.

41. The Agency provides free elementary and preparatory education lasting nine years in four fields of operations. In Jordan and in some schools in Jerusalem, 10 years of education is provided, and secondary schooling is provided in Lebanon. Education was provided to approximately 526,000 Palestine refugee children through 711 schools in the 2017/18 school year. Owing largely to demographic factors in Gaza, enrolment is increasing by approximately 10,000 pupils each year.

42. Independent assessments continually rank the UNRWA education programme high in terms of quality and efficiency relative to national school systems. UNRWA has achieved gender equality in terms of student enrolment in its schools.

43. The Agency's education system uses the host country curricula, which ensures that UNRWA students can continue their education at government secondary schools and universities and sit for unified national examinations. UNRWA reviews all issued textbooks across its five fields of operations against the curriculum framework as standard practice, and enriches the teaching of the host country curricula in each of its fields of operations to ensure that the education provided in its schools reflects the values and principles of the United Nations.

44. In the Syrian Arab Republic, UNRWA has been a pioneer in delivering education in emergency settings to provide access to quality education for Palestine refugees living in conflict situations. This has allowed UNRWA students in the Syrian Arab Republic to: (a) receive psychological support; (b) benefit from measures to improve their safety and security while accessing educational services; (c) utilize alternative means of education; and (d) continue to access quality inclusive education.

45. UNRWA provides quality and universally accessible primary health care to Palestine refugees. Annually, UNRWA undertakes more than 9 million medical visits in its 143 primary care clinics, which employ more than 3,300 health staff. Owing to the increasing lifespans of Palestine refugees, communicable diseases and maternal and child health care are no longer the biggest health challenges; increasing attention is being paid to non-communicable diseases such as diabetes and cardiovascular diseases, which are the leading cause of death among Palestine refugees and are more difficult and costly to manage and treat.

46. Health, education, and employment are essential elements of the livelihoods of Palestine refugees. UNRWA supports employment through career guidance counselling, labour-market studies and awareness programmes that promote technical and vocational education and training. The Agency operates eight vocational training centres in its five fields of operations, whose graduates enjoy high rates of employment. Between 2014 and 2017, some 15,000 students graduated from the vocational training centres, which contribute to mitigating poverty within the Palestine refugee community. Reduced employment opportunities have been a major factor contributing to increased poverty and loss of dignity for Palestine refugees. Without adequate funding, the Agency will see an increase in poverty and the number of unserved poor.

47. UNRWA offers microfinance services through two different channels: the microfinance programme and the microcredit community support programme. Efforts under those initiatives seek to ensure that Palestine refugees, including women and those in abject poverty, have access to microcredit and complementary financial services. They offer many Palestine refugees access to capital and an opportunity for self-sufficiency.

48. The Agency's social safety net programme supports and assists Palestine refugees through the provision of basic food baskets, cash transfers and/or e-vouchers with the aim of contributing to poverty mitigation for refugees across the Agency's fields of operations. The programme employs a poverty-based system to target and prioritize the refugees living in abject poverty and currently maintains a caseload of nearly 255,000 eligible Palestine refugees in Lebanon, Jordan, Gaza and the West Bank.

49. In 2017, UNRWA presented a zero-growth programme budget. In 2018, UNRWA presented a programme budget of $747 million for minimum operating requirements. The forecast shortfall against this budget was $146 million, of which $97 million was high-risk donor income and $49 million was liabilities carried forward from 2017.

50. The reform undertaken by the Agency has featured the following: (a) through the reform of the primary health-care programme, including the introduction of a family health team approach, e-health, appointment systems and the delegation of greater authorities to nurses and pharmacists, UNRWA has, without additional investment, reduced the number of doctor-patient visits per day, thereby increasing doctor-patient consultation time and reducing antibiotic prescription rates; (b) through the reform of medicine procurement, UNRWA has secured significant reductions in expenditure; (c) through the reform of its hospitalization programme in Lebanon, UNRWA has been able to protect access for the most vulnerable refugees while keeping the level of expenditure flat; (d) through a combination of systemic education reforms and the application of norms and standards on class formation, UNRWA has been able to accommodate larger numbers of pupils in classes in schools while still achieving, so far, strong education results; and (e) through reforms to its social safety net programme in 2016, UNRWA has been able to transition from the provision of food to the provision of electronic payment cards that can be used at designated grocery stores to poor Palestine refugees in Lebanon, Jordan and the West Bank, thereby providing a more dignified and effective form of assistance to those enrolled in the programme.

51. In tandem with those measures, the Agency has put in place rigorous financial and budgetary controls, with management tools such as hedging. Interest on short-term bank deposits generated a $2 million income gain above the budgeted income in 2017 and presents a prudent approach to financial management, including risk management.

52. Since the outbreak of the second intifada in 2000, UNRWA has provided emergency assistance to Gaza and the West Bank, funded through the emergency appeal for the Occupied Palestinian Territory. In the Syrian Arab Republic, Lebanon and Jordan, UNRWA has provided emergency assistance since June 2012 as part of the Humanitarian Response Plan, funded through the emergency appeal for the Syrian Arab Republic.

53. For 2018, $399 million is required to cover the cost of interventions for the emergency appeal for the Occupied Palestinian Territory and $409 million for the emergency appeal for the Syrian Arab Republic. Shelter ($145 million), food assistance ($119 million) and emergency cash-for-work ($84 million) make up the largest needs in Gaza and the West Bank, whereas cash assistance ($244 million) makes up nearly 55 per cent of the budget for Palestine refugees under the Syrian appeal.

54. While the generosity of donors must be recognized, UNRWA was only able to meet less than half of the identified emergency needs in 2017. As at August 2018, the appeal for the Occupied Palestinian Territory was facing a shortfall of $324 million (with some $74.2 million pledged, or approximately 18.6 per cent of the requested amount) and the appeal for the Syrian Arab Republic was similarly facing a significant shortfall of $308 million (or 24.5 per cent funded). The lack of funding has led UNRWA to scale back the amount and frequency of cash assistance distributed to Palestine refugees in the Syrian Arab Republic, as well as housing assistance for Palestine refugees from that country who have been displaced to Lebanon and Jordan. The required total for cash assistance for the Syrian emergency appeal amounts to $224 million, of which only $34.5 million has been pledged.

55. Since 2001, UNRWA has witnessed a continuing increase in the need for emergency aid to Palestine refugees in the Occupied Palestinian Territory. Repeated cycles of conflict in Gaza and a deteriorating situation in the West Bank have contributed to an increase in the needs of Palestine refugees. In 2017, Palestine refugees across the Occupied Palestinian Territory continued to face Israeli

occupation, the expansion of settlements, repeated human rights abuses and recurring escalations of violence and hostilities. In Gaza, Palestine refugees are facing a socioeconomic crisis that sees them in a worsening state of de-development. Gaza remains under blockade with severe restrictions on the free movement of people and goods. Movement restrictions make it difficult for Palestinians to access urgent medical treatment outside the Gaza Strip.

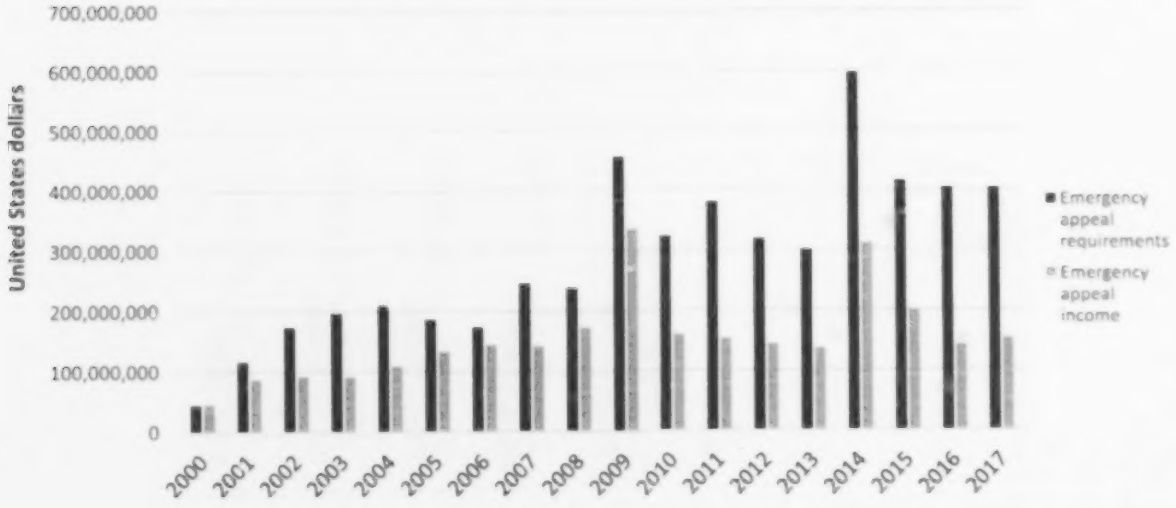
56. Ongoing restrictions by the Government of Israel on movement within and access to the West Bank by Palestinians, including those in East Jerusalem, continue, together with the demolition of Palestinian structures, with significant repercussions on Palestinian economic development. Many Palestinians in the West Bank, including Palestine refugees, remain at risk of displacement and dispossession and contend with high levels of insecurity due to the Israeli occupation. More than 15 per cent of Palestine refugees in the West Bank are food-insecure, and more than 125,000 are in need of assistance to meet basic food needs.

57. In Gaza, UNRWA has three emergency priorities: (a) the provision of support to food-insecure households; (b) the protection of Palestine refugees from the effects of conflict and violence; and (c) the effective management and coordination of emergency responses. In the West Bank, UNRWA has three emergency priorities: (a) an increase in access to food for food-insecure refugees; (b) enjoyment by crisis-affected refugees of their basic rights to services; and (c) the protection of Palestine refugees from the effects of the conflict and violence through access to services and advocacy. Figure I illustrates contributions to the emergency fund since its creation in 2000. With the exception of 2000, the appeal has been significantly underfunded.

Figure I

Funding for the emergency appeal for the Occupied Palestinian Territory, 2000–2017

(United States dollars)



58. As at January 2018, the emergency appeal for the Syrian Arab Republic funded essential services for the approximately 438,000 Palestine refugees who remained in that country, as well as 49,512 Palestine refugees who had fled to Jordan and Lebanon. The intervention has three major strategic priorities, namely: (a) preserving the resilience of vulnerable families through the provision of humanitarian assistance;

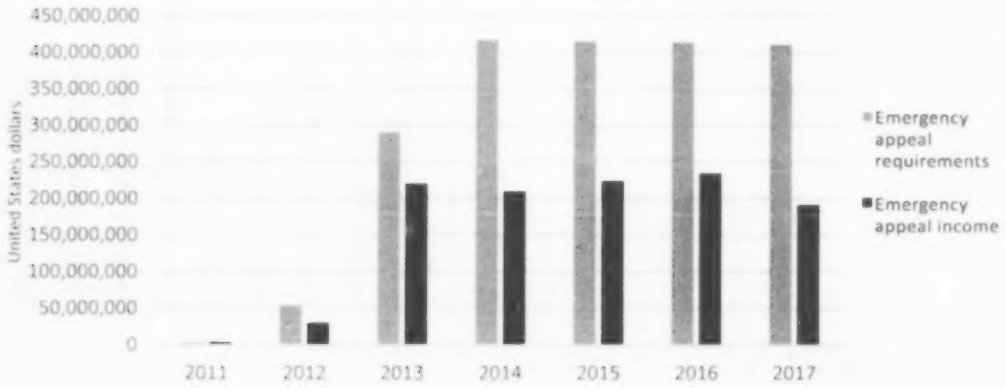
(b) providing a protective framework for Palestine refugees and helping to mitigate their vulnerability; and (c) strengthening humanitarian capacity, coordination and management.

59. Between January 2012 and June 2017, there were approximately 50 security-related incidents in which UNRWA schools were physically affected by shells, mortars or barrel-bombs; vehicle-borne improvised explosive devices; stray bullets; and unexploded ordnances. Palestine refugee children continue to face tremendous challenges to fully access primary education in the Syrian Arab Republic. Children have missed out on years of education owing to prolonged displacement and security issues. Most children suffer from psychosocial trauma, as a result of prolonged exposure to violence and hardship, resulting in significant learning challenges.

60. UNRWA continues to provide a range of life-saving and life-sustaining assistance and services to up to 438,000 vulnerable Palestine refugees. As at June 2018, the field of operations in the Syrian Arab Republic had completed one round of cash assistance reaching 405,193 individuals and one round of food assistance, reaching 395,499 individuals. Cash and food assistance remain the priority humanitarian interventions. Since 2015, UNRWA has not been able to roll out all planned rounds of cash and food assistance owing to funding shortages.

61. The funding for the Agency's emergency assistance in the Syrian Arab Republic is critical for the estimated 438,000 refugees remaining in the country. In 2018, 95 per cent of the Palestine refugees in the Syrian Arab Republic are in need of sustained humanitarian assistance. Unfortunately, a funding shortfall and donor fatigue have endangered some of the Agency's most important emergency programmes. Figure II shows funding requirements and pledged contributions for the Syrian emergency appeal. The appeal has been regularly underfunded and UNRWA has repeatedly called upon the international community to meet the humanitarian needs set out in the Syrian emergency appeal.

Figure II
Funding for the emergency appeal for the Syrian Arab Republic, 2011–2017
(United States dollars)



62. The Working Group recognizes that projects are an integral aspect of the work of UNRWA. The project budget seeks to provide the technical assistance and infrastructure requirements necessary for the overall operations of UNRWA.

63. The principal aim of the project budget is to upgrade the capacities and infrastructure of the Agency. Its priorities include the expansion and upgrading of education and health infrastructure, methods to maximize economic potential and employment opportunities, developments to camp infrastructure, enhancements to system management, adherence to host authorities' standards and the provision of necessary support for vulnerable groups.

64. The funding allocated for the project budget in 2017 was $379 million. As for the 2018 project budget, of the total requirements of $351 million, $59 million had been pledged by donors as at August 2018.

65. The Nahr el-Bared camp was destroyed in the fighting in Lebanon during 2007 and left 27,000 people displaced. The total amount needed to complete the reconstruction of the camp is $90 million. To date, some 10,000 people remain displaced. A failure to complete this project, one of the Agency's largest to date, would compromise the stability of northern Lebanon and beyond.

66. Beginning in 2013, as a result of the anticipated shortfalls in available funding, UNRWA implemented a series of measures to reduce the costs associated with relief assistance at the Nahr el-Bared camp. The Nahr el-Bared relief services budget was reduced from $18.8 million in 2010 to $5.3 million in 2015, with no funding secured from donors from 2016 onwards for relief services.

67. UNRWA continues to be concerned about the humanitarian needs of the remaining displaced residents of Nahr el-Bared. In particular, nearly 300 Palestine refugee families displaced from the camp reside in deplorable environmental health conditions and temporary shelters located in the areas adjacent to the camp. Additional support is required to ensure that these families can live in dignity until the reconstruction of the camp is completed.

68. Following the intense conflict of 2014 in Gaza and previous cycles of violence, UNRWA contributed to the rebuilding of destroyed homes, livelihoods and infrastructure in an effort to provide protection and services for the Palestine refugees affected by the violence. All 118 UNRWA installations that were damaged during the conflict in 2014, including 83 schools and 10 health centres, have been fully repaired. Progress has been made on residential reconstruction and the repair of damaged or destroyed Palestine refugee homes over the past four years; however, the pace has been affected by constraints on the importing of construction materials. By mid-2018, UNRWA was supporting more than 88,000 refugee families towards the repair or reconstruction of their homes. This has significantly reduced displacement; however, hundreds of families still remain displaced.

69. As at July 2018, $316 million (of the overall $720 million requested to implement the Gaza Reconstruction Plan of 2014) had been pledged in support of the Agency's reconstruction programme. The Agency, along with other actors involved in the reconstruction of Gaza, notably the Ministry of Public Works and Housing, still requires approximately $135 million in order to conclude the outstanding reconstruction and repair cases. The Working Group regrets that much of the $3.5 billion pledged at the conference in Cairo in October 2014 has not been disbursed by donors. The Gaza Reconstruction Mechanism continues to be the private sector's sole mechanism for the entry of construction materials into Gaza.

IV. Conclusions and recommendations

70. The Working Group wishes to thank all Member States, donors and hosts who have been supporting the work of UNRWA since its establishment and who have contributed to the well-being of Palestine refugees. The Working Group thanks

especially the Governments that have traditionally shown generosity towards Palestine refugees and UNRWA, including major donors and partners from the Cooperation Council for the Arab States of the Gulf.

71. The Working Group reiterates that the humanitarian problems faced by Palestine refugees today must be addressed as a shared international responsibility pending a just and durable solution of the Palestine refugee question, in accordance with international law, including the relevant resolutions of the United Nations.

72. The Working Group expresses its serious concern about the large funding gap affecting the Agency's programme budget in 2018, and without prejudice to General Assembly resolution 302 (IV) and subsequent resolutions renewing the mandate of UNRWA, reiterates that it is, above all, the responsibility of Member States and the wider international community to ensure that the Agency's services are maintained at an acceptable level; that the Agency can fulfil its mandate, in quantitative and qualitative terms; and that funding keeps pace with the requirements of the Agency to meet the growing needs of the refugee population. The Working Group is concerned about the possible destabilizing impact that the lack of funding for UNRWA may have on the region, at a time when the Middle East is already facing crises of various intensities.

73. The Working Group welcomes the Agency's continued and far-reaching reforms, as described in the present report, but acknowledges that the current reforms in themselves will not be sufficient to solve the problems relating to the Agency's deficit and encourages the Agency to make further efforts to continue its reform initiatives.

74. The Working Group expresses serious concern about the situation of Palestine refugees in the Syrian Arab Republic. The Working Group calls upon all parties to the conflict to ensure the sustained, regular and continuous provision of humanitarian supplies, notably food and medicine, to all besieged and hard-to-reach areas. It also appeals to all parties to the conflict to preserve the neutrality of the Palestine refugee community in the country. It condemns all forms of violence against that vulnerable community and encourages the international community to fund, to the greatest extent possible, the requirements laid out in the emergency appeal to support the Palestine refugees in the Syrian Arab Republic and those who have fled from that country to Lebanon and Jordan.

75. Similarly, the Working Group is extremely concerned about the suffering of Palestine refugees living in the Occupied Palestinian Territory, where continued tight restrictions on the movement of UNRWA staff and humanitarian goods, a general decline in socioeconomic conditions and repeated conflicts have heightened the distress of the community. It calls upon the Government of Israel to grant the Agency free and unfettered access to the territories. The Working Group calls for the lifting of the restrictions imposed on Gaza and the easing of access restrictions. The Working Group supports the further opening of Gaza crossings to allow for an unimpeded flow of humanitarian aid, commercial goods and persons to and from Gaza, in line with Security Council resolutions 1850 (2008) and 1860 (2009). It urges all potential donors, whether traditional or non-traditional, to redouble their efforts to fully respond to the Agency's emergency appeal for the Occupied Palestinian Territory for 2018.

76. The Working Group commends the Commissioner-General and all of the Agency's staff for their tireless efforts to maintain the regular and emergency services of the Agency under very difficult operational circumstances. The Working Group deplores the deaths of 30 UNRWA staff due to conflict-related violence since 2011 and expresses its concern for the 26 missing, detained or kidnapped UNRWA employees in the Syrian Arab Republic.

77. The Working Group calls upon all donors, including countries in the Middle East, to lend their full support to the reconstruction of the Nahr el-Bared camp in Lebanon and the reconstruction needs in Gaza that emerged following the Gaza conflict of 2014. It stresses that a failure to support those projects could have serious consequences for the security of Palestine refugees and the stability of the region.

78. Consistent with the report of the Secretary-General of 30 March 2017 (A/71/849) and taking the aforementioned into consideration, the Working Group:

(a) Urges all Governments to increase and sustain over several years their voluntary contributions to the Agency, where possible, and to contribute to the Agency's three funding portals, as described in the present report, while taking into account the primary importance of fully funding its programme budget first and foremost. The swift disbursement of announced contributions, including the pledges made at the ministerial conference held in Rome on 15 March and at the annual pledging conference held in New York on 25 June, is highly encouraged. Government contributions should keep pace with the requirements of the Agency to meet the growing needs of the Palestine refugee population and take into account the effects of inflation and other factors driving the costs of providing services. Contributions should also reflect appropriate international burden-sharing;

(b) Commends UNRWA for the measures it has taken to increase its efficiency while maintaining the quality of services to Palestine refugees and it encourages the continued implementation of those measures;

(c) Takes note of the recommendations contained in the report of the Secretary-General of 30 March 2017 (A/71/849) and all resolutions relating to the financing of UNRWA, with a view to addressing recurring budget deficits and sufficiently and predictably supporting the Agency's vital work.

Annex I

Pledges to the Agency's programmes in 2018 (cash and in kind) as at 30 June 2018

(United States dollar equivalent)

		Non-programme budget				
Donor	*Programme budget*	*Emergency appeal for the Occupied Palestinian Territory*	*Emergency appeal for the Syrian Arab Republic*	*Major repair and reconstruction in Gaza*	*Projects*	*Total*
Australia	6 848 674	1 130 369	0	0	23 556	8 002 599
Austria	471 698	0	0	0	0	471 698
Belgium	13 143 300	0	0	0	0	13 143 300
Bulgaria	82 547	0	0	0	0	82 547
Canada	0	7 745 933	0	0	0	7 745 933
Chile	12 500	0	0	0	0	12 500
Cyprus	120 000	0	0	0	0	120 000
Denmark	11 209 415	0	3 165 559	0	0	14 374 974
Estonia	339 829	0	0	0	0	339 829
Finland	5 376 344	0	0	0	0	5 376 344
France	10 381 287	617 284	617 284	0	782 928	12 398 783
Germany	4 838 710	4 270 080	8 363 202	0	591 275	18 063 266
Iceland	248 410	0	0	0	0	248 410
India	5 000 000	0	0	0	0	5 000 000
Indonesia	200 000	0	0	0	0	200 000
Ireland	5 246 914	294 811	1 851 852	0	0	7 393 577
Italy	8 343 558	0	0	0	766 509	9 110 068
Japan	22 296 156	0	8 000 000	0	4 892 663	35 188 819
Kazakhstan	50 000	0	0	0	0	50 000
Kuwait	2 900 000	0	5 000 000	0	0	7 900 000
Lebanon	91 208	0	0	0	0	91 208
Liechtenstein	214 362	0	0	0	0	214 362
Lithuania	24 540	0	0	0	0	24 540
Luxembourg	4 601 227	0	0	0	0	4 601 227
Malta	126 863	0	0	0	0	126 863
Mexico	500 000	0	0	0	0	500 000
Netherlands	15 531 661	0	0	0	0	15 531 661
New Zealand	731 900	500 000	500 000	0	0	1 731 900
Norway	15 144 173	0	13 411 675	0	0	28 555 847
Oman	0	0	0	0	667 782	667 782
Philippines	10 000	0	0	0	0	10 000
Poland	583 243	0	0	0	0	583 243
Portugal	81 728	0	0	0	0	81 728
Qatar	51 000 000	499 779	0	0	0	51 499 779
Russian Federation	2 000 000	0	0	0	0	2 000 000

Donor	*Programme budget*	*Non-programme budget*				
		Emergency appeal for the Occupied Palestinian Territory	*Emergency appeal for the Syrian Arab Republic*	*Major repair and reconstruction in Gaza*	*Projects*	*Total*
Saudi Arabia	50 000 000	0	0	10 000 000	36 891 896	96 891 896
Slovakia	0	0	61 728	0	0	61 728
Slovenia	79 800	0	0	0	0	79 800
Spain	1 265 465	154 072	19 123	0	0	1 438 659
Sweden	57 052 683	4 314 721	3 632 359	0	0	64 999 762
Switzerland	24 545 901	0	0	0	949 023	25 494 923
Syrian Arab Republic	47 707	0	0	0	0	47 707
Thailand	40 000	0	0	0	0	40 000
Turkey	11 500 000	6 994 251	0	0	0	18 494 251
United Arab Emirates	51 800 000	2 000 000	0	0	0	53 800 000
United Kingdom of Great Britain and Northern Ireland	50 802 139	0	16 130 336	0	735 546	67 668 021
United States of America	60 000 000	0	0	0	0	60 000 000
Holy See	100 000	0	0	0	0	100 000
State of Palestine	990 090	0	0	0	0	990 090
European Union	106 627 648	1 223 503	21 226 415	0	0	129 077 566
Total	**602 601 678**	**29 744 803**	**81 979 533**	**10 000 000**	**46 301 177**	**770 627 192**

Annex II

Pledges to the Agency's programmes in 2017 (cash and in kind), by value of contribution

(United States dollar equivalent)

			Non-programme budget				
Rank	*Donor*	*Programme budget*	*Emergency appeal for the Occupied Palestinian Territory*	*Emergency appeal for the Syrian Arab Republic*	*Major repair and reconstruction in Gaza*	*Projects*	*Total*
1	United States of America	157 476 322	95 000 000	103 300 000	0	8 489 263	364 265 585
2	European Union	113 173 193	5 688 892	3 554 502	0	20 099 156	142 515 744
3	Germany	10 838 220	8 277 112	14 171 560	21 512 325	21 669 498	76 468 714
4	United Kingdom of Great Britain and Northern Ireland	49 786 455	0	16 854 581	0	373 266	67 014 302
5	Sweden	53 925 634	3 353 079	4 549 251	0	124 185	61 952 150
6	Saudi Arabia	8 075 000	0	0	0	45 200 000	53 275 000
7	Japan	23 107 032	5 200 000	3 500 000	0	11 566 305	43 373 337
8	Switzerland	26 155 072	0	0	0	1 024 695	27 179 767
9	Norway	15 009 606	0	11 303 753	0	64 531	26 377 890
10	Netherlands	20 861 262	0	0	0	326 067	21 187 329
11	Canada	15 314 961	0	4 000 000	0	433 071	19 748 031
12	Australia	15 765 959	1 860 119	0	0	0	17 626 078
13	Denmark	17 009 020	0	0	0	0	17 009 020
14	Italy	8 537 890	1 387 323	2 369 668	0	1 896 405	14 191 286
15	United Arab Emirates	12 800 001	0	0	0	0	12 800 001
16	Belgium	6 850 512	1 184 834	3 541 927	0	150 298	11 727 572
17	France	6 900 212	1 001 374	235 294	0	1 476 510	9 613 390
18	Kuwait	4 000 000	0	5 000 000	0	0	9 000 000
19	Spain	2 565 823	1 052 763	2 271 170	0	1 208 201	7 097 957
20	Turkey	2 000 000	4 633 650	0	0	100 000	6 733 650
21	Ireland	4 343 105	592 417	1 176 471	0	0	6 111 993
22	Luxembourg	6 075 594	0	0	0	0	6 075 594
23	Finland	4 802 561	0	0	0	287 796	5 090 358
24	Brazil	475 000	3 325 000	0	0	0	3 800 000
25	State of Palestine	3 690 796	0	0	0	0	3 690 796
26	Austria	2 123 059	1 184 834	0	0	0	3 307 893
27	Russian Federation	2 000 000	0	0	0	0	2 000 000
28	India	1 250 000	0	0	0	0	1 250 000
29	Qatar	1 000 000	0	0	0	0	1 000 000
30	Poland	865 999	0	0	0	0	865 999
31	South Africa	0	792 253	0	0	0	792 253
32	New Zealand	729 300	0	0	0	0	729 300
33	Republic of Korea	220 000	0	500 000	0	0	720 000
34	Oman	0	0	0	0	667 755	667 755

			Non-programme budget				
Rank	*Donor*	*Programme budget*	*Emergency appeal for the Occupied Palestinian Territory*	*Emergency appeal for the Syrian Arab Republic*	*Major repair and reconstruction in Gaza*	*Projects*	*Total*
35	Iceland	200 000	0	0	0	296 417	496 417
36	Monaco	0	0	0	0	357 159	357 159
37	Estonia	86 957	266 809	0	0	0	353 766
38	China	350 000	0	0	0	0	350 000
39	Mexico	250 000	0	0	0	0	250 000
40	Czechia	0	0	229 442	0	0	229 442
41	Lebanon	177 118	0	0	0	0	177 118
42	Portugal	138 483	0	0	0	0	138 483
43	Malaysia	120 000	0	0	0	0	120 000
44	Liechtenstein	97 561	0	0	0	0	97 561
45	Syrian Arab Republic	70 538	0	0	0	0	70 538
46	Jordan	62 865	0	0	0	0	62 865
47	Malta	59 242	0	0	0	0	59 242
48	Slovenia	0	53 362	0	0	0	53 362
49	Kazakhstan	50 000	0	0	0	0	50 000
50	Thailand	40 000	0	0	0	0	40 000
51	Slovakia	28 441	0	0	0	0	28 441
52	Argentina	25 000	0	0	0	0	25 000
53	Lithuania	23 585	0	0	0	0	23 585
54	Chile	22 500	0	0	0	0	22 500
55	Cyprus	22 400	0	0	0	0	22 400
56	Egypt	20 000	0	0	0	0	20 000
57	Pakistan	20 000	0	0	0	0	20 000
58	Ecuador	5 000	0	0	0	0	5 000
	Total	**599 597 279**	**134 853 821**	**176 557 620**	**21 512 325**	**115 810 580**	**1 048 331 624**